

# FOURTH JITS EVALUATION REPORT

February 2023

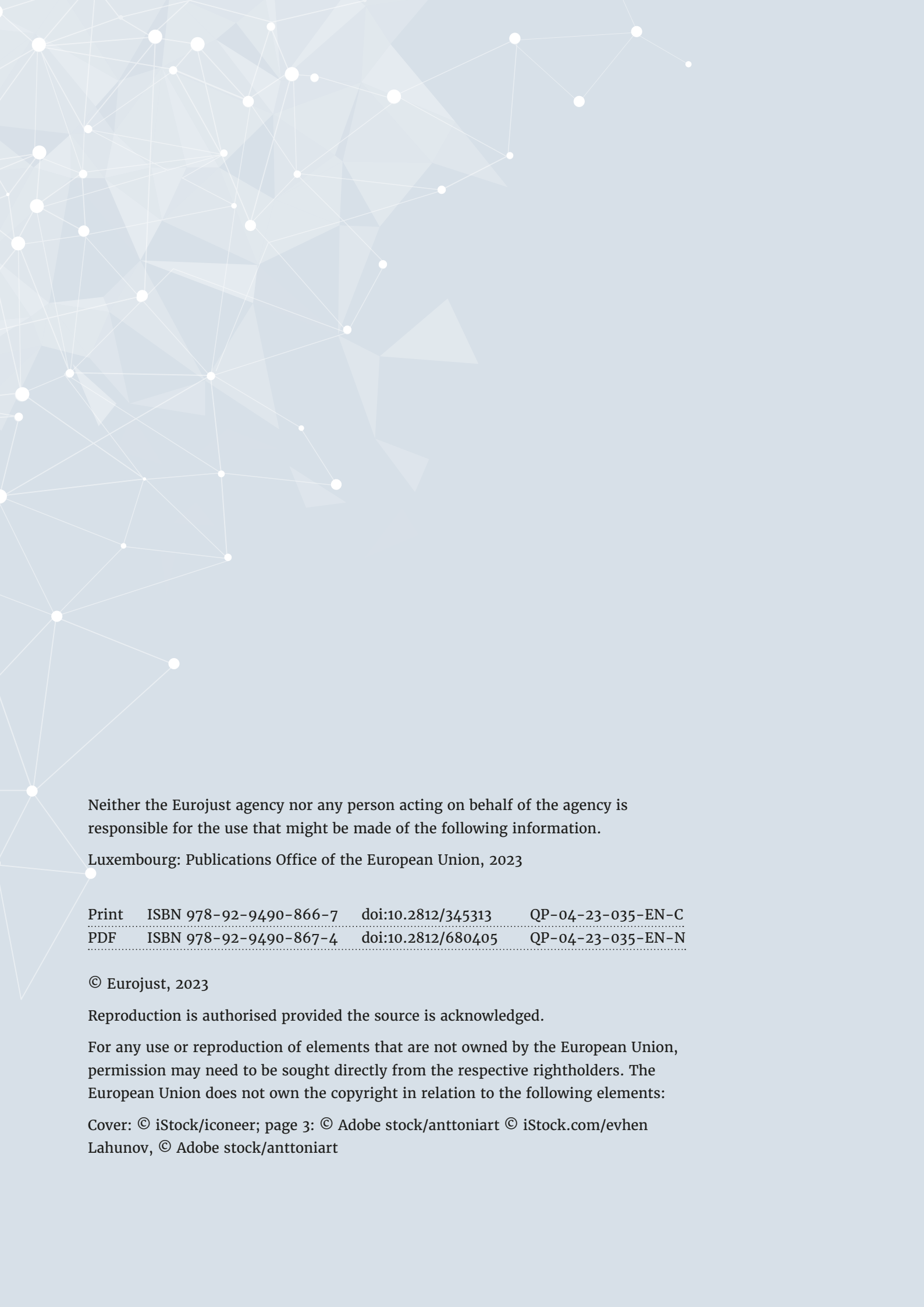


**EUROJUST**



**JITs Network**

The Network of National Experts on Joint Investigation Teams



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# EXECUTIVE SUMMARY

This is the Fourth Joint Investigation Teams (JITs) Evaluation Report published by the Secretariat of the Network of National Experts on Joint Investigation Teams since 2014. It is based on 82 evaluations completed by JITs practitioners between November 2019 and November 2022, and provides an overview of the main practical findings in terms of lessons learned and best practices identified. It also focuses on the European Union Agency for Criminal Justice Cooperation (Eurojust)'s experience with multilateral JITs, recent developments in JITs and JITs-related case law.

**Chapter 1** describes the best practices identified regarding the setting-up of a JIT and in the operational phase.

Best practices regarding the setting-up phase were as follows.

- Law enforcement and judicial authorities from the countries concerned should meet at the earliest opportunity to discuss the possibility of setting up a JIT, legal requirements, practical considerations and possible obstacles.
- Flexibility regarding the location of coordination meetings was helpful in speeding up the process of setting up a JIT. Coordination meetings between neighbouring countries could, for example, be held on the territory of one of those countries, instead of in The Hague.
- The speed with which a JIT can be set up is crucial to the success of the investigation. It is advisable to involve any authorities that may need to approve the setting up of the JIT, or are otherwise involved in the process, as early as possible.
- Consider the involvement of Eurojust, the European Union Agency for Law Enforce-

ment Cooperation, and other relevant EU agencies/bodies at an early stage. These agencies/bodies can provide expertise in drafting the JIT agreement and legal, analytical and logistical support.

- Particularly when cooperating with non-EU countries, liaison officers posted in relevant countries should be utilised to facilitate the first contact and the exchange of information. It is worth considering involving Eurojust, with its global network of Contact Points, for establishing contacts at an early stage. It is also worth considering involving Eurojust Liaison Prosecutors, who can contribute significantly to successfully setting up JITs.
- Flexibility regarding the language(s) of the JIT agreement can facilitate the fast and smooth establishment of the JIT. If national legislation allows, the JIT agreement may be signed in an agreed common language (English or any other common language).
- At an early stage of cooperation, the countries involved should explain their national legal/judicial systems so that potential hindrances to cooperation can be pre-empted. Countries that cooperate frequently should consider creating a checklist of relevant differences in their legal systems to help those involved gain an understanding of possible issues.

Best practices regarding the operational phase were as follows.

- Direct and continuous contact and exchange of information among the JIT parties are important.
- Personal relationships between the JIT members should be established and maintained to promote trust and facilitate swift

communication. There should be frequent meetings, face-to-face if possible.

- The appointment of at least one JIT member in each party as the contact point(s), to facilitate communication between JIT members, should be considered.
- Discussions should take place on how to approach countries not involved in the JIT and how to coordinate efforts and make use of established international contacts with such countries, to facilitate cooperation and the execution of letters of request (LoR's)/ European Investigation Orders.
- Parties should inform each other of the specificities of their respective legal systems, even if it may look like everything is clear.
- A clear understanding between all JIT parties regarding where and for what to prosecute each of the suspects is crucial.
- If investigating fraud, corruption or irregularities involving EU funds, the involvement of the European Anti-Fraud Office (OLAF), either as a JIT participant or to support national authorities in gathering information, should be considered. One JIT reported that one of the parties requested information from the European Anti-Fraud Office, which, once provided, was shared with other JIT partners.
- Seconded members should be utilised to support investigative action and streamline the flow of information. The appointment of seconded members with specific expertise or knowledge of specific languages should be considered.
- The secondment of JIT members to other jurisdictions for an extended period, to facilitate contacts and the exchange of information, should be considered. This will provide for even closer cooperation.
- The same interpreters should be used throughout the investigation and prosecution phase, if possible.
- In JITs on trafficking in human beings and migrant smuggling, visits to the country where the crime took place and to the country where victims originated should be considered to understand the local specificities of the case. Talking to victims and otherwise engaging with the context of the crime can be impactful and crucial for successful prosecution.
- There should be a focus on victims. To give them a sense that justice is being served, it is advisable to keep in touch, help them prepare for trial and include them in the process. One evaluated JIT noted that the victim strategy was essential to secure convictions. Experts should be involved to support hearings of vulnerable victims.
- Sharing of knowledge and experience between JIT members provides learning opportunities regarding different legal systems and investigative techniques, and enables the development of trust. JIT members can learn from each other, for example about investigative tactics and tools.
- Good cooperation within a JIT can inspire use of JITs in other cross-border investigations. Personal contacts among colleagues should be established, and experiences and best practices shared.
- The appointment of at least one JIT member in each party as the contact point(s) for the coordination of the media strategy should be considered.
- Communication between the JIT parties about possible JIT funding needs, including appointing a designated JIT member responsible for funding, should be promoted. Foreseeable costs should be discussed as early as possible so that JIT funding can be applied for under the first available call. There should be agreement on who will submit the Funding Application and which/whose costs will be included.

- Mid-term evaluation of cooperation within the JIT, to improve future cooperation, should be considered.
- Subject to national legislation, extending cooperation into the trial phase to allow for efficiency in additional gathering and sharing of information and evidence, if needed, should be considered.

**Chapter 2** describes Eurojust’s experience with multilateral JITs, which was the focus of Eurojust’s contribution to this Fourth JITs Evaluation Report. Specific features and challenges of multilateral cross-border cooperation in the framework of a JIT are highlighted. Eurojust’s contribution:

- advises practitioners on the steps that need to be taken to initiate multilateral cooperation in a JIT;
- presents key aspects to consider to make a multilateral JIT work well during the operational phase;
- explains how Eurojust can provide dedicated support;
- presents a concrete example of a multilateral JIT in a migrant smuggling case.

In addition, a dedicated checklist has been created. This provides an overview of the aspects to be taken into account in the setting-up and operational phases of a multilateral JIT. The checklist is available in all official EU languages.

**Chapter 3** highlights recent developments in JITs between the start of 2019 and the end of 2022. It presents general figures, important novelties, and trends and new practices in the functioning of JITs. It includes an overview of changes related to the financial and logistical support provided to JITs by Eurojust and a list of other tools recently developed to support practitioners with the setting up and functioning of JITs.

**Chapter 4** presents insights into judicial decisions in some Member States between the start of 2019 and the end of 2022 in which JITs-related issues were tackled.

# GENERAL INTRODUCTION

This is the Fourth Joint Investigation Teams (JITs) Evaluation Report published by the Secretariat of the Network of National Experts on Joint Investigation Teams (hereinafter the JITs Network) since 2014. It is based on 82 evaluations completed by JITs practitioners between November 2019 and November 2022.

These periodic reports constitute one of the deliverables of the JITs evaluation project.

The JITs evaluation project was initiated in 2013 with the following objectives:

- assisting practitioners in evaluating the performance of their JITs in terms of results achieved, added value and possible shortcomings, in order to improve future cooperation;
- enhancing knowledge of JITs by facilitating the identification of the main legal and practical challenges experienced and solutions found.

An interactive [Evaluation Form](#) was introduced in 2014 as a tool to facilitate evaluations. At the request of the JITs Network, the form was updated and streamlined in 2021.

Since the second evaluation report, the project has been implemented in close cooperation with the European Union Agency for Criminal Justice Cooperation (Eurojust). This is also the case for this report. In this fourth issue, Eurojust's contribution focuses on its experience in supporting multilateral JITs.

This report introduces two new chapters: recent developments in JITs (Chapter 3) and case law related to JITs (Chapter 4).

**Chapter 1** provides a non-exhaustive overview of the findings from the information provided in evaluation forms received by the JITs Network Secretariat between November 2019 and November 2022.

**Chapter 2** focuses on Eurojust's experience with multilateral JITs. It highlights the specific features and challenges of multilateral cross-border cooperation in the framework of a JIT, provides advice to practitioners on the steps that should be taken, and explains how Eurojust can provide dedicated support.

**Chapter 3** highlights recent developments in JITs between the start of 2019 and the end of 2022. It presents general figures, important novelties, and trends and new practices in the functioning of JITs. It includes an overview of changes related to the financial and logistical support provided to JITs by Eurojust and a list of other tools recently developed to support practitioners with the setting up and functioning of JITs.

**Chapter 4** presents insights into judicial decisions in some Member States between the start of 2019 and the end of 2022 in which JITs-related issues were tackled.



# CHAPTER 1:

FINDINGS FROM  
THE EVALUATION  
OF JOINT  
INVESTIGATION  
TEAMS





# CHAPTER 1: FINDINGS FROM THE EVALUATION OF JOINT INVESTIGATION TEAMS

The objectives of Chapter 1 are to provide the main highlights of the content of the JITs evaluation forms received by the JITs Network Secretariat between November 2019 and November 2022, to provide a summary of best practices as reported by the evaluated JITs and to complement the findings of the previous reports.

JIT National Experts, as the main vector of transmission of the completed evaluation forms to the JITs Network Secretariat, continue to play a key role in the evaluation process. Moreover, JIT National Experts very often initiate and support the evaluation process.

Joint evaluations include the viewpoints of all parties involved in a JIT and, therefore, usually produce the most valuable findings. The JITs Network Secretariat received 35 evaluation forms prepared jointly by the JIT parties. The JITs Network Secretariat and/or Eurojust directly supported 13 evaluations during dedicated evaluation meetings. The organisation of evaluation meetings was heavily impacted by the COVID-19 pandemic, which resulted in fewer meetings taking place between March 2020 and October 2021. This is one of the reasons for the reporting period for the Fourth JITs Evaluation Report being extended by one year.

**Chapter 1** analyses the findings related to the three main stages of the life cycle of a JIT (setting-up phase, operational phase and closure), including the identified specific legal/practical issues and best practices. It also analyses recommendations made by practitioners to their colleagues and to the EU bodies and institutions.

## 1.1 SETTING-UP PHASE

### 1.1.1. Identification of the need to set up a joint investigation team

One important prerequisite for the successful establishment and running of JITs is the timely identification of relevant cases, which is often linked to the (early) involvement of Eurojust.

The evaluations reveal that a majority of the concerned countries had cooperated prior to the setting up of the JIT by way of exchanges of information between national law enforcement and judicial authorities (bilateral contacts). This prior exchange of information helped in the identification of the need for cooperation in a JIT.

In some cases, the need to set up a JIT appeared during Eurojust coordination meetings, after connections between existing parallel or linked investigations were identified or when discussion triggered the initiation of investigations in other countries in which investigations had not yet commenced.

While Member States' national authorities mostly establish first contact either directly or with the assistance of Eurojust or the European Union Agency for Law Enforcement Cooperation (Europol), one of the non-EU countries involved in a JIT reported that they sometimes have to find other options to contact the relevant counterparts. In one case, a non-EU country asked its liaison officer for Nordic countries

to facilitate the first contact with the relevant national authorities in the concerned Member State, which later agreed to set up a JIT with the non-EU country.

### 1.1.2. Setting up a joint investigation team: legal requirements, practical considerations and possible obstacles

EU instruments describe two particular situations in which a JIT can be established: demanding cross-border investigations with links to other Member States and/or connected investigations requiring coordination. However, apart from legal requirements, practical considerations need to be taken into account when assessing the advisability and feasibility of a JIT in a given case.

**The evaluated JITs recommended that law enforcement and judicial authorities from the countries concerned meet to discuss legal requirements, practical considerations and possible obstacles at the earliest opportunity, and to involve Eurojust, which, with its expertise, can play a key role in this respect.**

The received evaluations outlined issues that required specific consideration by the national authorities before the JIT was set up. These are described in the following sections.

#### Willingness to cooperate and diverging operational priorities

Several JITs reported that not all countries with connections to the alleged crimes under investigation were willing to join the JIT, for example due to the different stages of the investigations or the sensitivity of the case.

In some cases, authorities experienced challenges regarding the prioritisation of targets

and deciding which facts and investigations to include within the JIT.

#### Legal basis: joint investigation teams with involvement of non-EU countries

Non-EU countries can be involved as parties in a JIT when a legal basis for the setting up of the JIT exists and the national legislations of the involved countries allow for this.

One JIT involving a non-EU country reported that the national legislation of the Member State involved allowed JITs to be set up only with other Member States. However, as there was a willingness to cooperate, an ad hoc solution was found. The two countries negotiated a bilateral cooperation agreement that included provisions on JITs and thus provided the legal basis. Once the national ministries had signed the cooperation agreement, the countries were able to agree upon and sign the JIT agreement. This cooperation agreement might be used as a basis for any future JITs involving these two countries.

Some JITs reported on the situation regarding the United Kingdom's withdrawal from the EU. On 29 March 2019, in anticipation of Brexit, the UK authorities proposed the termination of all JIT agreements set up based on the 2000 European Convention on Mutual Assistance in Criminal Matters and/or the Council framework decision on JITs <sup>(1)</sup>. With the support of the Eurojust UK National Desk <sup>(2)</sup>, all current JIT agreements were terminated and replaced by new ones based either on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters or on UN conventions. A few others mentioned delays in setting up the JITs due to uncertainties regarding Brexit.

<sup>(1)</sup> [Council Framework Decision of 13 June 2002 on joint investigation teams](#) (OJ L 162, 20.6.2002, p. 1).

<sup>(2)</sup> Since 1 January 2021, the United Kingdom has stationed a Liaison Prosecutor at Eurojust.

### Stage and nature of domestic investigations

Most of the evaluated JITs reported that there were ongoing (parallel or linked) investigations in the countries concerned prior to the setting up of the JIT. When this was not the case in all concerned countries, some were able to commence their own investigations after receiving relevant information on the case and, only then, join the JIT.

In the majority of the cases with parallel or linked investigations, the national investigations were still in an early stage when the JIT was set up. This shows that national authorities may be more inclined to engage in a JIT when their investigation is still at a relatively preliminary stage and when investigations in other countries are at an equivalent stage.

In one case, however, a flexible approach was adopted by a Member State in which the investigation was already very advanced and two members of the organised crime group involved in trafficking in human beings had already been charged.



When the national authorities of Member State A proposed setting up a JIT, Member State B had already charged two suspects and collected evidence from victims and witnesses. Thus, Member State B was hesitant to cooperate, as this would require opening a completely new investigation. Finally, with the support of Eurojust and the willingness of Member State B's national authorities to tackle the whole organised crime group, it was decided that a new case file would be opened, with a new prosecutor in charge. This allowed for the setting-up of the JIT

Although it is not standard, JITs can be established in the advanced stages of an investigation (i.e. after charges are made and the case is presented to the court), subject to national legislation. In one case, a JIT was established when proceedings were already ongoing in several courts and suspects were already in

custody. The investigation of the other JIT party was equally advanced.

Another example of the flexibility that JITs can provide was presented by a JIT in which so-called structural investigations were ongoing. As explained by the JIT, the purpose of cooperation was that, within the framework of the structural investigations, the JIT parties would collect structural information and evidence with a view to building up individual cases and opening individual proceedings. The investigative objectives were to investigate crimes committed by the Syrian regime since 2011, identify suspects in Countries A and B and prosecute those suspects in the individual proceedings.

### Structural investigations

Subject to national legislation, structural investigations can be used when, for example, victims or evidence are present on the territory of a and it is clear that there is a structure or organisation involved that has committed several linked offences, even if these structures have not yet been identified. Structural investigations are not directed against specific persons but rather focus on the 'structures' and 'context' within which crimes were perpetrated. In other words, they focus on 'contextual elements' and 'structural aspects' of a specific situation. These investigations can function as a 'container' for large amounts of information, which can then be linked to individual cases.


*For more information, see Section 3.2.*

### Involvement of multiple domestic investigations in one joint investigation team


In most cases, JITs incorporate one domestic investigation from each of the countries in-



volved. However, in two of the evaluated JITs, one Member State brought two or more domestic investigations into one JIT.

 The organised crime group was covered by several ongoing investigations in both Member State A and Member State B. While in Member State A the two investigations could be merged, this was not possible in Member State B, as the targets seemed to be completely different. Discussion initially focused on setting up two separate JITs, each involving one investigation from Member State B. Ultimately, Member State A preferred to set up one single JIT involving both investigations from Member State B. Member State A was of the opinion that it would be too difficult to manage two JITs at the same time.

While the reasons to include several domestic investigations in one JIT could be mostly pragmatic, they could also present important operational value, as demonstrated by one of the evaluated JITs.

 In Member State A, two interlinked investigations were ongoing related to a series of gang murders. Shortly after the investigations started, another murder was committed, this time in Member State B. The murder was planned in Member State A, thus Member State A opened a third investigation. It was clear that the suspects (accomplices) in the most recent case were also suspects in the other two investigations. When it was agreed that Member State B would prosecute not only the shooter but also all the accomplices from Member State A, the three related investigations running in Member State A all joined the same JIT. The three investigations in Member State A were very much interlinked and all in a position to support the investigation in Member State B.

While it is not common practice for several national authorities from one country to be parties in one JIT, this solution brought an important operational advantage in the case presented above. The concentration of information and evidence from all the files allowed prosecutors in the Member State B to present to the court the context and gravity of the situation, securing convictions not only for the shooter but also for all the accomplices.

### 1.1.3. Drafting and signing joint investigation team agreements

Received evaluations continue to show that national authorities agreeing to negotiate a JIT agreement in a common working language is very helpful in the setting-up process. Some JITs reported that they could sign an English version of the JIT agreement and did not require the agreement to be translated into their national languages, which sped up the process.

### 1.1.4. Best practices identified

- Law enforcement and judicial authorities from the countries concerned should meet at the earliest opportunity to discuss the possibility of setting up a JIT, legal requirements, practical considerations and possible obstacles.
- Flexibility regarding the location of coordination meetings was helpful in speeding up the process of setting up a JIT. Coordination meetings between neighbouring countries could, for example, be held on the territory of one of those countries.
- The speed with which a JIT is set up is crucial to the success of the investigation. It is advisable to involve any authorities that may need to approve the setting up of the JIT, or are otherwise involved in the process, as early as possible.
- Consider the involvement of Eurojust, Europol and other relevant EU agencies/bodies at an early stage. These agencies/bodies can

provide expertise in drafting the JIT agreement and legal, analytical and logistical support.

- Particularly when cooperating with non-EU countries, liaison officers posted in relevant countries should be utilised to facilitate the first contact and the exchange of information. It is worth considering involving Eurojust, with its global network of Contact Points, for establishing contacts at an early stage. It is also worth considering involving Eurojust Liaison Prosecutors, who can contribute significantly to successfully setting up JITs.
- Flexibility regarding the language(s) of the JIT agreement can facilitate the fast and smooth establishment of the JIT. If national legislation allows, the JIT agreement may be signed in an agreed common language (English or any other common language).
- At an early stage of cooperation, the countries involved should explain their national legal/judicial systems so that potential hindrances to cooperation can be pre-empted. Countries that cooperate frequently should consider creating a checklist of relevant differences in their legal systems to help those involved gain an understanding of possible issues.

## 1.2 OPERATIONAL PHASE

To enable JITs to operate efficiently, JIT parties have to consider some practical arrangements concerning, inter alia, the following issues: investigative objectives; coordination of investigative measures (tools, frequency and modalities); technical means of exchanging information and evidence; role of seconded members; prosecution strategies; administration and logistics (i.e. working language, equipment and resources); media strategy; and financial support.

The evaluated JITs reported on their experiences in the planning and coordination of operational activities in relation to these key factors.

### 1.2.1. Coordination of investigative measures

The evaluations once again confirmed that direct communication and personal contacts are essential for efficient cooperation, with one JIT remarking ‘We had direct and frequent contact, which was very effective and a key to success.’

The evaluated JITs that were operational during the COVID-19 pandemic emphasised that, although they were able to meet online, personal meetings are still indispensable for building mutual trust and fostering better cooperation:



The biggest challenge for this JIT was an outbreak of COVID when the JIT was starting its operational work. JIT members could not regularly meet in person due to the COVID restrictions. They were able to communicate, however they all felt that personal meetings are indispensable when planning activities of the JIT.

In the majority of cases, investigative measures were coordinated between JIT parties during periodic meetings. Between the meetings, JIT members relied on direct, informal contact, using phone calls, WhatsApp groups, videoconferences or emails for communication. To keep communication swift, efficient and streamlined, some of the evaluated JITs appointed contact points for communication.

**The evaluated JIT recommended that, prior to online meetings, participants should tell each other what videoconferencing tools they will use, to avoid meetings being delayed or cancelled due to technical issues.**

### 1.2.2. Tools for transmission of information and evidence

Some JITs reported that they used the Secure Information Exchange Network Application (SIENA) or, alternatively, Eurojust's dedicated equipment and secure email service made available by Eurojust through its JITs Funding Programme.

However, it was noted that use of SIENA still presents a challenge for several countries with centralised systems that do not allow direct/individual transmitting of messages.

**One JIT recommended that, in cases in which SIENA is used, a particular SIENA string could be dedicated to the investigations included within the JIT**

Transfers of large data files remain a challenge, as standard tools typically do not allow this type of transfers. Europol's large file exchange (LFE) system could be used in these situations, to some extent; one JIT reported that it was not possible to send a large number of big files or audio-type digital evidence through the LFE system.

Due to the limitations related to the security and capacity of the available electronic tools, JIT parties mostly rely on transmitting information and evidence 'hand to hand' during JITs meetings. Outside the meetings, they used emails and national secure communication systems/tools.

Several JITs again highlighted the need for a common secure communication platform that

would allow for secure exchange of information and evidence, including large data files.

#### JITs Collaboration Platform



To address the reported issues, on 1 December 2021, the European Commission presented a Proposal for a Regulation establishing a collaboration platform to support the functioning of JITs. The key purposes of such a platform are to ease electronic communication; allow information and evidence, including large amounts of data, to be shared securely; ensure traceability of evidence; and support the planning and coordination of JIT operations.

*For more information, see Section 3.5.*

On the other hand, some of the evaluated JITs encountered specific logistical issues in transmitting evidence to the relevant partners, in particular during the COVID-19 pandemic, when exchanges 'hand to hand' were much more limited.



More concretely, one JIT described the difficulties faced in transferring physical evidence from one Member State to another. During the action day, numerous electronic devices were seized in one of the Member States, and it was agreed that these devices would be sent to Europol for analysis. However, the devices filled several suitcases, complicating the transportation process, as the suitcases were too heavy to be taken on the plane. The JIT partners eventually managed to transport the devices part of the way by plane, and the remainder of the journey took place by car.



### 1.2.3. Seconded members

The level of involvement and the role of seconded members varied from case to case; however, their participation during the action period (arrests, interrogations, searches and seizures) and after the actions (selecting and reviewing relevant material, interviewing the victims/witnesses) was regarded as an important contribution to the efficiency of investigations.

It seems that JITs investigating crimes concerned with trafficking in human beings in particular benefit from the involvement of seconded members. Common investigative approaches and victim strategies contributed to a better understanding of the scope of criminality, including the exploitation element. Seconded JIT members assisted during victim/witness interviews, facilitated the contact and provided necessary care and protection support.

**Different countries have different legal traditions and cultures. It is necessary to visit the scene of the crime, where the offence took place and the people were exploited, but also the place of origin of the victims, to understand their background and origin. This should be part of the standard procedure in such cases.**

In some cases, JIT members were seconded to another party not only for specific actions but also for extended periods, to provide general support to investigations.



For instance, in one JIT, it was decided to second police officers from Member State A to Member State B and vice versa. In Member State A, the seconded member was particularly helpful due to his knowledge of the language and because he provided some very specific details of the ongoing investigation in Member State B. The seconded member in Member State B was equally useful, sharing the details of the investigation in Member State A.

In a case involving neighbouring countries, a JIT member from one country was seconded to the other country from the very beginning of the cooperation. He was based in the same office as the local investigator. He was fully involved in the investigation, having access to all relevant information and taking part in all briefings and meetings, which contributed to the overall success of the cooperation.

### 1.2.4. Prosecutorial strategies and jurisdiction

Several JITs provided useful information in relation to the criteria used to decide on the forum in which to prosecute: the location of the arrest; when and where (most of) the offences were committed; the location/nationality of the main suspect; and the origin of the suspect(s) and/or victim(s). The prospects of the case in a given jurisdiction – particularly in view of the evidence collected, admissibility standards and applicable sanctions – were also taken into consideration.

The evaluations emphasised the importance of considering the jurisdiction from an early stage. Nevertheless, initial arrangements can also be reconsidered taking into account the developments of investigations, as was the situation in the following case.



At the start of the JIT cooperation, three Member states agreed that each would prosecute the suspects who were nationals of the respective state. Following a discussion at the coordination meeting, Member State A decided to transfer its proceedings to Member State B, which was in a better position to prosecute the suspects involved as a group (organised crime group). The transfer of proceedings was desirable to concentrate evidence and establish the facts as fully as possible and to accelerate the proceedings.

Discussions on which jurisdiction should prosecute or on the transfer of proceedings are often mentioned by the evaluated JITs, thus suggesting that JITs are a very effective platform to address these issues. However, one JIT reported that, despite extensive deliberations and Eurojust's assistance, the JIT parties could not agree which of them would be in the best position to prosecute.



The parties expressed different opinions in relation to a possible infringement of the *ne bis in idem* principle, if both Member State A and Member State B were to prosecute the five common suspects (for misuse of company assets in Member State A and for money laundering in Member State B). Eurojust organised a coordination meeting and prepared a legal assessment with recommendations regarding the *ne bis in idem* matter <sup>(3)</sup>. Finally, the JIT parties agreed to leave the final decision, if an issue were to actually arise, to the competent national courts.

In JITs involving non-EU countries, it is particularly important to discuss jurisdictional issues and legal possibilities for transfer of proceedings at an early stage, as it might be

that extraditions to non-EU countries or vice versa are not possible.



JIT between Member State A and Non-EU Country B reported that the issue of jurisdiction was discussed prior to operational actions. From the beginning, Non-EU Country B explained that it is not possible, according to their legislation, to extradite its nationals. For this reason, the countries agreed that Non-EU Country B would prosecute its nationals if they were to be arrested on its territory.


In particular, in view of a common action day, tailor-made solutions for gathering evidence and planning arrests are necessary. Despite detailed planning, unanticipated developments might occur. However, cooperation in a JIT enables the strategy to be quickly adjusted and actions to be taken for a successful outcome, as demonstrated by the JIT mentioned below.




A few days before the action day, it became known that the national of Non-EU Country B travelled from Member State A to Non-EU Country B for vacation. In order not to compromise the action day, both countries agreed to arrest him in Non-EU Country B. As he could not be extradited to Member State A, it was agreed that he would be prosecuted in Non-EU Country B. Member State A sent all the documentation and evidence to Non-EU Country B.

Furthermore, JITs represent a valuable framework in which to discuss legal and practical issues related to the transfer of proceedings, for instance how the transfer could affect the procedural status of the same person (suspect/witness) in different jurisdictions.

<sup>(3)</sup> The recommendation was based on [Eurojust's guidelines on deciding which jurisdiction should prosecute](#).

 In one case, JIT parties discussed a possible transfer of proceedings from Member State A to Non-EU Country B for the nationals of Non-EU Country B. However, these persons were suspects in Member State A, but witnesses in Non-EU Country B. If, in Non-EU Country B, their status changed to suspects, their witness statements would need to be excluded as evidence in the ongoing proceedings.

 During the action day in Member State A, the arrest of the suspect was filmed and published on social media. This resulted in a need to deviate from the initially agreed media strategy. A press conference was organised to inform the public about the background and context of the arrest. The prosecutor from Member State B was still in Member State A, and personally participated in the press conference.

### 1.2.5. Communication with the media

The evaluated JITs generally adhered to one of the following options regarding their communication with the media: no communication took place or a coordinated approach was agreed upon between the JIT partners.

In some cases, JIT parties worked together with the support of Eurojust to issue a common Eurojust press release.

In a small number of cases, the JIT parties agreed that one of them would be responsible for all communication to the media. There were also a number of JITs in which the parties communicated separately with the media in their respective countries, although usually agreements were made about which topics could or could not be discussed with the media.

Relations with the media affected the confidentiality of the procedure in three reported cases. In one case, a specific situation occurred, forcing the JIT parties to adjust their plans:

### 1.2.6. Specific challenges identified

#### Language issues

The evaluated JITs faced several language-related issues. These included lack of a common working language, or insufficient command of that language; not being able to obtain translations of documents on time; large or complex investigations that required the translation of considerable amounts of data; high costs of interpretation and translation; and difficulties in finding timely and cost-effective solutions when less common languages were involved. Translation can also lead to loss of nuances and details, which raises the risk of miscommunication. One JIT pointed out that the use of slang / youth language / coded language by suspects can present an obstacle for interpreters and complicate the assessment of investigative results.

#### Cooperation with countries not parties to the joint investigation teams

Some of the evaluated JITs in which the scope of the investigation was extended outside the territory of the JIT parties reported the following challenges:


- delays in investigations due to non-execution or late execution of European Investigation Orders (EIOs) / letters of request (LoRs) by countries not involved in the JIT;
- difficulties in sharing evidence obtained through LoRs / EIOs by one of the JIT par-

ties with the others, in particular obtaining ‘consent to share’ after the LoRs/EIOs had already been executed: ‘The problem was that after receiving the executed EIOs/LoRs from non-JIT countries, they had to obtain a consent to share the evidence with the other JIT parties. Some countries did not reply until the end of the JIT operation. As a result, this evidence was not passed to the others.’


**Some JITs consider it best practice to include a request for ‘consent to share’ in the original LoR/EIO to facilitate the agreement to share information and evidence with other JIT parties**

### Differences in national legislation

A continuous dialogue between JIT parties is necessary for understanding of the differences in the legal systems of the countries involved, in particular with regard to requirements for investigative measures; competences of law enforcement / judicial authorities; disclosure issues; and data protection and confidentiality rules. In this context, one JIT commented:

 It was very important to understand each other[s] systems. The JIT parties felt more confident to work together after discussing the differences in the legal systems. They observed that it is generally taken for granted that the other country will have the same procedure, but this is not always the case. It would be recommendable to have some tips, information on how the criminal procedure works in specific countries. The investigative process needs to be well understood.

A specific example of a misunderstanding between JIT parties is as follows:

 It was mentioned that it was not possible to obtain permission from authorities of the JIT party for an undercover agent from the other JIT party to come to their territory, despite the first party initially thinking this would be possible.

### Mandatory deadlines for investigation

Mandatory deadlines in one of the JIT parties whose investigation was much more advanced led to organising two separate action days. Even though such a solution is generally not preferable, it did not affect the success of the investigation in this specific case. On the contrary, it helped with the collection of crucial evidence using intercepts. The suspects, who were arrested during the first action day and then released, continued to communicate using their phones. As they were stressed, they were less careful and had revealed many details of their activities, helping investigators to gather crucial information for organising the second action day.

### Exchange of classified information


One JIT remarked that it is important to note that under their national law it is necessary to obtain permissions from several authorities to present classified information to the court, which might cause delays.

### COVID-19

A couple of JITs that operated during the COVID-19 pandemic reported that the situation affected some planned operational steps.

### Brexit


The anticipation of the changes in judicial cooperation between the United Kingdom and Member States lead, in some cases, to uncertainties, as explained by one JIT:

 In October 2020, three nationals of Member State A were arrested in Member State A following the European Arrest Warrant (EAW) being issued by the United Kingdom. As one of the suspects appealed against the EAW, a decision needed to be taken on time for this suspect to be surrendered to the United Kingdom before Brexit. This was very important, as Member State A would not have allowed the extradition of their own national to the United Kingdom after Brexit, as the United Kingdom became a non-EU country.

### 1.2.7. Timing of joint investigation team closure

As in the [Third JITs Evaluation Report](#), the evaluations showed that there are differences in practice and national legislation regarding the stage until which a JIT can be operational. Some JITs reported that, while the partners would have liked to extend the JIT into the trial phase, sometimes Member States' national legislation did not allow for this. The investigators therefore had to resort to EIOs to exchange additional evidence during the trial.

The JITs in which it was possible to extend cooperation throughout the trial phase highlighted the significance of it, with one JIT remarking:

 The JIT was extended as they expected that in the trial phase, they will need more information and evidence and these could be much easier obtained within the JIT. In economic crimes, it is commonly observed that suspects do not say much during the investigation while at trial, with the assistance of a lawyer, they present a defence strategy that requires additional gathering of information and evidence.

### 1.2.8. Best practices identified

- Direct and continuous contact and exchange of information among the JIT parties are important.
- Personal relationships between the JIT members should be established and maintained to promote trust and facilitate swift communication. There should be frequent meetings, face to face if possible.
- The appointment of at least one JIT member in each party as the contact point(s), to facilitate communication between JIT members, should be considered.
- Discussions should take place on how to approach countries not involved in the JIT and how to coordinate efforts and make use of established international contacts with such countries, to facilitate cooperation and the execution of LoRs/EIOs.
- Parties should inform each other of the specificities of their respective legal systems, even if it may look like everything is clear.
- A clear understanding between all JIT parties regarding where and for what to prosecute each of the suspects is crucial.
- If investigating fraud, corruption or irregularities involving EU funds, the involvement of the European Anti-Fraud Office (OLAF), either as a JIT participant or to support national authorities in gathering information, should be considered. One JIT reported that one of the parties requested information from OLAF, which, once provided, was shared with other JIT partners.
- Seconded members should be utilised to support investigative action and streamline the flow of information. The appointment of seconded members with specific expertise or knowledge of specific languages should be considered.
- The secondment of JIT members to other jurisdictions for an extended period, to facilitate contacts and the exchange of in-

formation, should be considered. This will provide for even closer cooperation.

- The same interpreters should be used throughout the investigation and prosecution phase, if possible.
- In JITs on trafficking in human beings and migrant smuggling, visits to the country where the crime took place and to the country where victims originated should be considered to understand the local specificities of the case. Talking to victims and otherwise engaging with the context of the crime can be impactful and crucial for successful prosecution.
- There should be a focus on victims. To give them a sense that justice is being served, it is advisable to keep in touch, help them prepare for trial and include them in the process. One evaluated JIT noted that the victim strategy was essential to secure convictions. Experts should be involved to support hearings of vulnerable victims.
- Sharing of knowledge and experience between JIT members provides learning opportunities regarding different legal systems and investigative techniques, and enables the development of trust. Parties can learn from each other, for example about investigative tactics and tools.
- Good cooperation within a JIT can inspire use of JITs in other cross-border investigations. Personal contacts among colleagues should be established, and experiences and best practices shared.
- The appointment of at least one JIT member in each party as the contact point(s) for the coordination of the media strategy should be considered.
- Communication between the JIT parties about possible JIT funding needs, including appointing a designated JIT member responsible for funding, should be promoted. Foreseeable costs should be discussed as early as possible so that relevant funding

can be applied for under the first available call. There should be agreement on who will submit the Funding Application and which/whose costs will be included.


- Mid-term evaluation of cooperation within the JIT, to improve future cooperation, should be considered.
- Subject to national legislation, extending cooperation into the trial phase to allow for efficiency in additional gathering and sharing of information and evidence, if needed, should be considered.

### 1.3 EFFECTIVENESS OF JOINT INVESTIGATION TEAMS

The level of satisfaction with the use of JITs continues to be extremely high, with almost all evaluated JITs indicating that JITs made an effective contribution to the investigation.

Some evaluated JITs also underlined the excellent cooperation and exchange of information, facilitating successful prosecutions. They felt that the JIT made a crucial contribution to the investigations and, in several instances, led to the complete dismantling of the criminal organisations, including the freezing and confiscation of the proceeds of crime.

One JIT reported:

 This JIT was very successful, in particular because of the excellent communication between the involved parties. The JIT facilitated a quick information exchange and a swift reaction to the plans of the OCG [organised crime group] (revealed by interception measures). Before the JIT started to operate, the authorities investigated 12 criminal acts and 12 suspects. Because of the JIT, 23 criminal acts and 22 suspects are now being prosecuted. The JIT has therefore led to the identification of additional facts and suspects. The good connections established between the national authorities will also benefit other future cases.

In some countries, the efforts of the JITs were specifically acknowledged and praised by the national authorities. In one case, the court referred to the ‘Herculean efforts’ of the JIT investigation. One JIT reported that the JIT members of one party were awarded an ‘Investigator of the Year’ prize. In one country, successful cooperation within the JIT was acknowledged as best practice for cases of trafficking in human beings for labour exploitation, and JITs were recognised as a commendable tool in similar cases.

## 1.4 FINDINGS RELATED TO EUROJUST’S AND EUROPOL’S SUPPORT

### 1.4.1. Eurojust’s support

Several JITs indicated that Eurojust helped to identify connected national cases and introduced involved countries to the idea of setting up a JIT, bringing the relevant authorities in contact with one another. In addition, Eurojust facilitated the setting up of the JITs by helping to organise coordination meetings,

assisting with the negotiation and drafting of the JIT agreements, and providing legal assistance. Eurojust also facilitated the execution of EIOs or LoRs prior to the setting up of the JITs, when necessary.

During the operational phase, Eurojust again provided support to many JITs by facilitating coordination meetings, providing interpretation, coordinating action days and assisting with EIOs or LoRs to countries not involved in the JIT. In addition, Eurojust provided JITs with legal support, for example by clarifying national legal requirements for specific investigative measures; assisted in resolving jurisdiction issues; and supported discussions regarding transfers of proceedings.

### JITs funding

In addition to logistical and legal assistance, Eurojust also supports JITs by providing financial support. The evaluations show that the funding benefited the JITs, for example because translation costs and the costs of face-to-face meetings were reimbursed, which facilitated communication between the parties.

Some evaluated JITs encountered legal or practical challenges related to JIT funding. Several JITs noted in particular that the requirement for awarded money to be spent within the action period is not always feasible. The operational needs and activities of the JIT must constantly be adapted to the changing needs of the investigations, which can result in delays or changes to the actions initially planned. Furthermore, activities are organised based on the investigative needs of the JIT, without taking into account calls for funding or action period windows. It was noted that JIT financing rules should adapt to meet the needs of the JIT as much as possible.

One JIT suggested extending the action period from 3 months to 6 months, without the need to request an extension. Another recommendation was to promote more flexibility in relation to certain cost categories, particular-

ly translation. The costs of translation can be difficult to estimate beforehand because JIT partners do not know how many documents and other materials may need to be translated throughout the action period. Furthermore, the requirement for the invoice to be issued within the action period posed a challenge for several JITs, since the parties are reliant on external companies to issue such invoices on time.

#### 1.4.2. Europol's support

Europol assisted national authorities in particular with the exchange of information, including in cross-checking of information against the agency's databases and organising operational meetings. On several occasions, Europol provided analytical support and support through its mobile offices.

Some JITs also made use of Europol's SIENA and LFE systems for information exchange.

One JIT in particular highlighted the support of Europol:

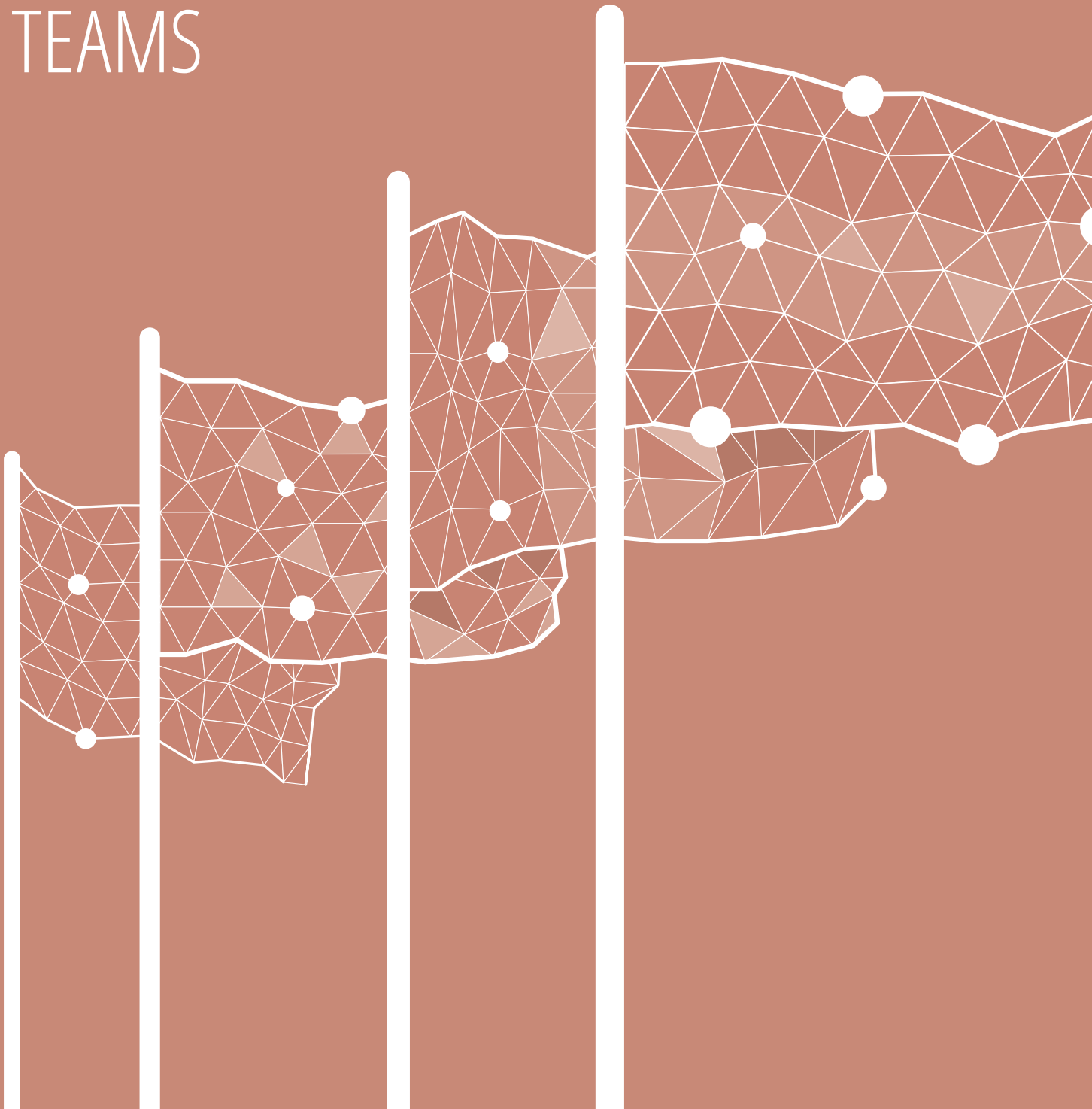


Europol supported this case from the beginning, as it was involved in a thematic project on the crime type investigated by the relevant countries. When the JIT was set up, Europol joined as a participant to the JIT. Europol provided financial support (prior to the setting up of the JIT) and analytical support. During the action day, two Europol representatives were present in Member State A.



# CHAPTER 2:

## EUROJUST'S EXPERIENCE WITH MULTILATERAL JOINT INVESTIGATION TEAMS





# CHAPTER 2: EUROJUST'S EXPERIENCE WITH MULTILATERAL JOINT INVESTIGATION TEAMS

When looking at Eurojust casework, it can be observed that the vast majority of JITs are still bilateral. In light of the considerable agility of criminal networks, and increased criminal activities in various crime areas (such as cyber-dependent crimes, drug trafficking, online child sexual abuse and transnational organised crime), the question of whether the possibility of setting up multilateral JITs should be explored more frequently arises. On the other hand, several challenges were identified regarding the setting up and functioning of JITs involving more than two countries.

The Eurojust contribution to this Fourth JITs Evaluation Report therefore focuses on Eurojust's experience with multilateral JITs, highlighting the specific features and challenges of multilateral cross-border cooperation in the framework of a JIT, providing advice to practitioners on the steps that need to be taken and explaining how Eurojust can provide dedicated support. This contribution is primarily based on experiences shared during discussions with selected Eurojust National Desks, complemented by findings extracted from Eurojust cases involving multilateral JITs, and Eurojust casework statistics.

The presented contribution is divided into the following sections. **Section 2.1** is dedicated to the initiation of multilateral cooperation in a JIT. **Section 2.2** outlines key aspects to consider during the operational phase of a

multilateral JIT. In **Section 2.3**, the support possibilities of Eurojust are highlighted, and **Section 2.4** presents a case with a multilateral JIT. Finally, **Section 2.5** provides a checklist for multilateral JITs.

## 2.1 HOW TO INITIATE MULTILATERAL COOPERATION IN A JOINT INVESTIGATION TEAM

### 2.1.1. Is a multilateral joint investigation team always a good idea?

The benefits of JITs are widely known: not only do JITs enable an exchange of information and evidence and real-time cooperation, but they also unite judicial and law enforcement practitioners and help them to visualise and work towards a common goal in complex, cross-border cases. With a successful JIT, valuable work relationships are also established. However, JITs are not always automatically the preferred option for cooperation, and a careful assessment has to be carried out on a case-by-case basis. Especially when investigations are pending in multiple countries, there are various considerations involved in the decision of whether to set up a multilateral or bilateral JIT

or to cooperate by way of other instruments of police and judicial cooperation.

In the experience of Eurojust, the following steps are important.

### **Identification of parallel/linked investigations**

As a first step, it is necessary to obtain a comprehensive overview of parallel or linked investigations at national and international levels. Once these investigations have been identified, an assessment can be made of which countries will need to cooperate most intensively. Key factors to take into account is whether the investigations are at a similar stage and the need for cooperation. Europol and Eurojust can provide support in identifying transnational links and gaining an overview of the scope of the case.

In particular, Eurojust casework confirms that a (multilateral) JIT might not be the best tool for cooperation if some countries have already reached an advanced stage in their investigation whilst others are at the very beginning.

### **Assess the scope of required cooperation**

Once all linked or parallel investigations have been identified, national authorities need to assess where overlaps exist and to what extent future cross-border cooperation is required.

In multilateral cases supported by Eurojust, various factors were taken into account when deciding on how to cooperate:

- the need for enhanced cooperation to tackle complex crimes, particularly involving transnational organised crime groups;
- the level of overlap between the investigations and the need to prevent and solve conflicts of jurisdiction;
- the estimated scope of information/material that would need to be exchanged;

- measures to be conducted jointly, such as joint action days in multiple countries with possible attendance of officials from one country in another country;
- the available resources in the countries involved.

### **What it takes**

National authorities need to consider the organisational/administrative effort of entering into a multilateral JIT and the required resources (not only staff but also financial resources) to effectively cooperate during the operational phase.

However, the most important aspect is having the right mind-set. A multilateral JIT can function only when the national authorities involved have the same understanding of the JIT concept and common expectations regarding what they want to achieve with the JIT cooperation.

Entering into a multilateral JIT requires dedication from all JIT parties and a willingness to contribute and actively support the JIT activities. A multilateral JIT should not be set up for the sole reason of applying for JITs funding (e.g. to cover translation costs). However, Eurojust funding can undoubtedly be very helpful for multilateral JITs, as they are inherently more expensive than simple bilateral JITs.

### **Importance of involving Eurojust at an early stage**

When a prosecutor realises that coordination at international level is required, it is important that they involve Eurojust at the earliest possible stage. This is even more important in multilateral cases, as inevitably the more countries there are involved, the more effort and time it takes to bring all key actors together and agree on a way forward.

### 2.1.2. Setting up of a multilateral joint investigation team

Once all parallel or linked investigations are identified and the intention to set up a JIT has been formulated, there are several options for setting up a JIT, which again need to be assessed on a case-by-case basis. An important question when setting up a JIT is how to define/limit the scope of the JIT and what the objective of the JIT should be.

#### Various approaches

One option observed in the Eurojust casework is first setting up a smaller or bilateral JIT between countries that have already established good, close cooperation. The benefit is that the authorities know each other and can quickly start the JIT cooperation. Other countries with parallel or linked investigations could possibly join at a later stage.

In other cases, countries took strategic decisions to join forces in order to convince another country of the value of joining a JIT.



In a drug trafficking case in which drugs had been smuggled from Country A, the impact of the activities of the organised crime group was felt in multiple countries as the distribution chains were to Countries B, C and D. Countries B, C and D (which are neighbouring countries) decided to set up a JIT and to approach Country A together as this would give a stronger message when seeking cooperation. Country A ultimately also joined the JIT.

When it is clear from the outset that investigations are pending in multiple countries, national authorities need to consider that the setting up and management of a multilateral JIT will require more time and effort. In Eurojust cases, it was observed that JITs comprising up to four JIT parties are, in general, manageable. For JITs with more than four

JIT parties, the advantages and disadvantages should be weighed carefully.

#### Experience at national level

Prosecutors experienced in JITs know well what steps need to be taken and what the hurdles can be in international cooperation. Therefore, especially in multilateral JITs with more than four JIT parties, it is valuable if the JIT members have previous JITs experience.

For example, when planning an action day in multiple countries, it makes a big difference if the prosecutor is experienced in this. The general rule is that the less experience a prosecutor has, the more time is needed to ensure a thorough preparation of an action day. Eurojust can be of assistance to the national authorities particularly where the prosecutor is less experienced.

#### Legal framework

In the casework of Eurojust, no major issues were encountered in identifying the legal framework for a multilateral JIT <sup>(4)</sup>. However, Eurojust observed that there has been recent interest in setting up JITs with certain non-EU countries that do not yet have the legal basis to join a JIT. Particularly in relation to core international crimes, but also drug trafficking and child abuse cases, there is a need for enhanced cooperation with certain non-EU countries. Eurojust can assist in the identification of possible solutions. For example, the principle of reciprocity might serve as a legal basis in the absence of an applicable legal framework.

<sup>(4)</sup> For detailed information on the legal framework for setting up JITs involving non-EU countries, see Chapter 1 and Annex I of the [Guidelines on Joint Investigation Teams Involving Third Countries](#).

### **Drafting of the joint investigation team agreement**

The Eurojust National Desks usually take an active role and assist the national authorities in elaborating a draft JIT agreement in a common working language (often English) with a view to setting up a multilateral JIT. Often, one Eurojust National Desk takes the lead in compiling the input from all countries into one document. Outstanding legal issues on the clauses to be included can be discussed in the framework of coordination meetings.

Potential future JIT parties can decide to explicitly mention in the JIT agreement that they have agreed on a common working language. In addition, it is advisable to check which procedural phase each country can work until within the JIT framework.

### **Definition of the purpose and aim of the joint investigation team**

In some cases, a challenge arose when the national authorities used a different approach or a different style to define or summarise their proceedings during the drafting of the JIT agreement. In addition, the interests of the countries can vary in this early stage of a case when they look at the case from their own national perspectives only.

It is of great importance in multilateral JITs to define and outline the scope of the respective national proceedings so as to have a clear picture what falls under the JIT and at the same time to avoid an overly detailed description limiting the possibilities for JIT cooperation when the national investigations evolve.

In view of the principle of legal certainty, the JIT agreement should specify which proceedings are covered by the JIT agreement, which crimes were committed, the period investigated, the links between the various investigations and the aim of the JIT cooperation. However, when it comes to the targeted suspects / organised crime group, the required level of detail in the JIT agreement should be

thoroughly assessed in light of the national requirements. Some countries prefer a less detailed description in the JIT agreement to allow for flexibility in the JIT cooperation, for example by referring to the national file references instead of mentioning specific suspects. However, other countries require more detailed information, in particular when the JIT agreement is used as a basis for conducting investigative measures.

### **Translation of the joint investigation team agreement and signature process**

In the experience of Eurojust, most countries require the JIT agreement to be translated into their own language and original copies signed by all JIT parties. In multilateral JITs, this can easily result in considerable organisational/administrative and financial efforts. JIT parties can decide to include a clause in the JIT agreement specifying that all language versions are on the same level, and if there occurred a problem with the interpretation then one selected language version (often English) would prevail. In a multilateral JIT, it is also possible that the signature process will take longer than in bilateral JITs.



In one case, the JIT cooperation started with four countries. While Countries A and B accepted the English version as the final document, Countries C and D required a translation into their national languages. The JIT agreement stated that it was negotiated in English. Then each country needed to sign one set of documents in the different language versions ( $3 \times 4 = 12$  signatures). The Eurojust National Desk of Country A (the lead of the case) collected the scanned version of the signatures and distributed a complete set of documents. While Countries A and B did not need the original documents, Countries C and D required them in their national case files.

To speed up the setting-up process in multilateral JITs, Eurojust recommends that the JIT agreement is negotiated in a language accepted by all. If national legislation allows, only one language version should be signed. When, according to national legislation, a translation of the JIT agreement is required, signing only one language version and then producing a certified translation (which does not need to be signed by the JIT partners) could be considered. In addition, whether a scanned version of the JIT agreement suffices or whether original documents are needed should be checked.

## 2.2 HOW TO MAKE A MULTILATERAL JOINT INVESTIGATION TEAM WORK – KEY ASPECTS TO CONSIDER

### 2.2.1. Establishment of a common investigative approach

It is a misconception that the setting up of a multilateral JIT automatically results in one big common investigation. Rather, a JIT regulates the cooperation between countries where there are overlaps between the various investigations. Therefore, it is important that the JIT parties get together to either establish and implement a common investigative approach or inform each other about their national investigative approaches and ensure they can co-exist without jeopardising each other.

In Eurojust cases with multilateral JITs, the biggest challenges in the early operational stage were often different views on prosecutorial strategies and reaching an agreement on

future steps. In addition, the identification of key targets and the issue of who will be prosecuted where and for which offences need to be addressed in a timely manner.

In addition, it has to be highlighted that, in complex, multilateral JITs, a basic understanding of each other's judicial and police systems is essential. In the early operational phase, it can therefore be recommended that JIT partners take the time to explain the main elements of their respective systems (such as procedural rules, available police databases, legal powers and investigative possibilities).

### 2.2.2. Appointment of a driver/coordinator

In cases involving multilateral JITs, Eurojust observed added value where one JIT party took the lead and acted as a driver/coordinator in the interest of the JIT. This could be decided between the JIT partners informally, for example during JIT meetings, when the partners get to know each other better and build trust. In addition, it is advisable that one country takes the lead in requesting JIT funding on behalf of the JIT. Parties are advised to consider setting out JIT funding issues in the JIT agreement.

At a more advanced stage of a multilateral JIT, it is possible that the investigation in one country reaches a dead end, resulting in a risk that JIT activities are slowed down. It then becomes crucial that the other JIT parties remain active and continue to cooperate. In this case, one option could be for that country to withdraw from the JIT, leaving the other countries continuing the JIT. The focus of the investigation can sometimes shift, but should nevertheless remain clear.

### 2.2.3. Contact/communication between joint investigation team members

Due to the increased levels of required coordination and cooperation in multilateral JITs, it is particularly important for them to have JIT meetings on a regular basis in order to keep each other updated and decide on steps to be taken. Those meetings can involve all or selected JIT members. When many national judicial and law enforcement authorities are involved in the case, it is often easier to reach agreement on the way forward in face-to-face meetings. Eurojust can assist in bringing all JIT partners together, if requested. In addition, Europol can organise meetings at law enforcement level.

To enable smooth communication, it is advisable to appoint one contact person per JIT party. Ideally, this person will speak a common working language.

At police level, investigators often use informal communication (e.g. through WhatsApp or Viber chat groups). At judicial level, alongside direct contact, prosecutors and (investigative) judges rely more often on Eurojust services. In multilateral JITs, Eurojust can act as a bridge between the national judicial authorities.

### 2.2.4. Exchange of information

With several countries involved in a case, there is a risk that too many documents are exchanged between the JIT partners and that the purpose of the sharing becomes unclear. This can result in uncertainty about the documents' admissibility as evidence and large translation costs. It has to be kept in mind that, during the disclosure phase, documents might become accessible to third parties, and national case files should include only the material necessary and relevant for the respective national proceedings. A crucial question is 'where do you need to cooperate and what do you need to share?'.

From the Eurojust casework perspective, several best practices can be identified regarding the exchange of information within a multilateral JIT.

- In the first JIT meeting, the issue of exchange of information between JIT partners and disclosure needs to be addressed. In particular, JIT partners could explain how judicial files are managed in their countries (e.g. which documents are included in the judicial file?).
- All JIT partners should carefully assess which documents in their possession need to be shared with whom. Of course, the information could be relevant to all JIT partners. However, often, information needs to be exchanged only where there is an overlap between the investigations, and there might be an overlap only between some investigations.
- JIT partners can help each other in filtering information/documents by relevance for the investigations. After the filtering of documents, a decision can be taken regarding which documents should be shared with whom and which documents require translation.
- JIT partners need to discuss how to exchange large files electronically in a secure environment. For example, Europol's LFE solution could be used.
- When certain documents are of relevance to multiple countries in a multilateral JIT, an option could be to translate the material into one common working language (often English). Each JIT partner can then assess individually whether translation into their own language is still required.
- As JITs are a judicial cooperation tool, documents considered to be intelligence should not be shared without a clear marking that they cannot be used as evidence in judicial proceedings.



- The JIT members should keep track of action taken and information exchanged to the extent needed in light of respective national legislation.

### 2.2.5. How to deal with common suspects

It is important to identify the common suspects targeted by the JIT investigations in a timely manner. When deciding on a priority to prosecute, there is often a certain time pressure, as deadlines need to be respected, particularly when suspects are in custody. It is important that there are clear agreements between the JIT partners, preferably before a joint action day, on who will prosecute whom and for what specific offences in order to avoid an infringement of the *ne bis in idem* principle.



A JIT was set up between three countries in a case of drug trafficking, money laundering and organised crime. When the investigations reached an advanced stage, with the support of Eurojust and Europol, a list of common targets was established. In the framework of Eurojust coordination meetings, a priority to prosecute in relation to the common suspects was agreed between the three JIT partners and one country outside of the JIT. The prosecutor from Country A sent an official document/letter to Country B capturing the agreement reached on the priority to prosecute and listing the persons Country A issued arrest warrants for, including a description of the charges. This was done prior to the joint action day and ensured a smooth execution of the measures.

### 2.2.6. (Joint) action days

Before the investigations in the countries involved reach an advanced stage, it is important to mutually understand the differences in

judicial systems and to manage expectations well. In complex cross-border cases in which a multilateral JIT has been set up, national case files are often huge, and one JIT party might need more preparation time for a joint action day than another.

When preparing joint action days, an overview of measures <sup>(5)</sup> can help to clarify which measures have to be executed where, which measures fall under the remit of the JIT and for which measures national court orders, mutual legal assistance or mutual recognition requests are required. It is also important to discuss well in advance the possible starting time and whether JIT members should be seconded to another country during the execution of the measures. In addition, a common media strategy needs to be decided, taking into account the confidentiality of the investigations.

In a multilateral JIT, it can also be the case that, due to different stages of investigations or due to an imminent danger, a JIT party needs to intervene earlier or take certain measures. In such a case, it is important that JIT partners consult each other and that the other investigations are not jeopardised (in particular, the overall scope of the JIT investigations should not be disclosed prematurely).

### 2.2.7. Possible extension of the joint investigation team

If additional countries express interest in joining an existing JIT, it is important to check what stage the various investigations are at and what the countries want to achieve with the expansion of the JIT. There has to be a proper expectation management in relation to what could then be achieved within the JIT framework. In general, when two or more countries have reached an advanced stage in their JIT investigations, it might not be advis-

<sup>(5)</sup> When joint action days are supported by a coordination centre at Eurojust, such an overview of the measures to be executed simultaneously is prepared by Eurojust based on input from the national authorities involved.

able to have a country joining the JIT where that country is still in an early investigative phase.



Shortly before a joint action day, an additional country joined a multilateral JIT. However, the authorities of this new JIT country could not conduct searches in the framework of their own national proceedings as their investigation was not advanced enough and still required requests for the searches / search orders from another JIT party.

## 2.3 THE ROLE OF EUROJUST

Eurojust provides legal, operational and financial support in the various phases of the life cycle of a JIT <sup>(6)</sup>. When it comes to multilateral JITs, there are particular challenges due to the inherent complexity of the investigations and the number of countries involved. Here, the continuous support of Eurojust can be even more indispensable for a successful outcome of the cross-border cooperation.

In the setting-up phase, Eurojust can bring all relevant national authorities together in [coordination meetings](#); provide advice on the suitability of setting up a JIT and on the suitability of countries that could join as JIT parties; assist in the drafting of the JIT agreement; collect input from all countries and merge it into one JIT agreement; and facilitate the signature process. Through Eurojust coordination, the time needed to set up a multilateral JIT can be shortened significantly.

In the operational phase, in bilateral JITs, national authorities sometimes do not require Eurojust's support services, when the di-

rect cooperation between the two countries is functioning well. However, in most multilateral JITs, the role of Eurojust in guiding the national authorities, keeping track of the progress of the JIT, providing advice and coordinating the measures in the various JIT party countries is crucial. In cases involving multilateral JITs, Eurojust can also provide information on the overlaps of the pending investigations, the judicial cooperation issues at stake and possible solutions.

The core support provided by Eurojust includes the organisation of coordination meetings, preferably face to face. For each meeting, a decision needs to be taken regarding whether all JIT partners (and possibly also countries outside of the JIT) or only selected ones should attend. This could be the case when a particular pending issue affects only some JIT parties. It is essential, at national level and for Eurojust internally, that the coordination meetings are well prepared and have targeted objectives. In general, prior to a coordination meeting, Eurojust National Desks meet internally to identify/anticipate legal and operational issues at stake (e.g. possible extension of the JIT, bis in idem issues, priority to prosecute <sup>(7)</sup>, transfer of proceedings <sup>(8)</sup>) and to find ways of cooperating effectively. With this procedure, it can also be ensured that the discussions at the coordination meeting are limited to the most pressing and important issues. Coordination meetings also contribute to strengthening mutual trust and understanding between the JIT partners.

In addition, Eurojust supports joint action days through the setting up of [coordination centres](#). It also facilitates cooperation with countries outside of the JIT and judicial cooperation after the joint action day.

<sup>(6)</sup> See general information on Eurojust's role in JITs on [Eurojust's website](#).

<sup>(7)</sup> See the Eurojust [Guidelines for Deciding 'Which Jurisdiction Should Prosecute?'](#).

<sup>(8)</sup> See the [Eurojust report on the transfer of proceedings in the European Union](#).

Eurojust can provide advice on how to draft amendments to the JIT agreement, for example when only some of the JIT parties want to extend the JIT agreement.

In many cases, Europol and Eurojust join forces to support the activities of multilateral JITs. For example, coordination meetings at Eurojust can be followed by operational meetings at Europol or vice versa.

### 2.3.1. Statistics on Eurojust cases with multilateral joint investigation teams

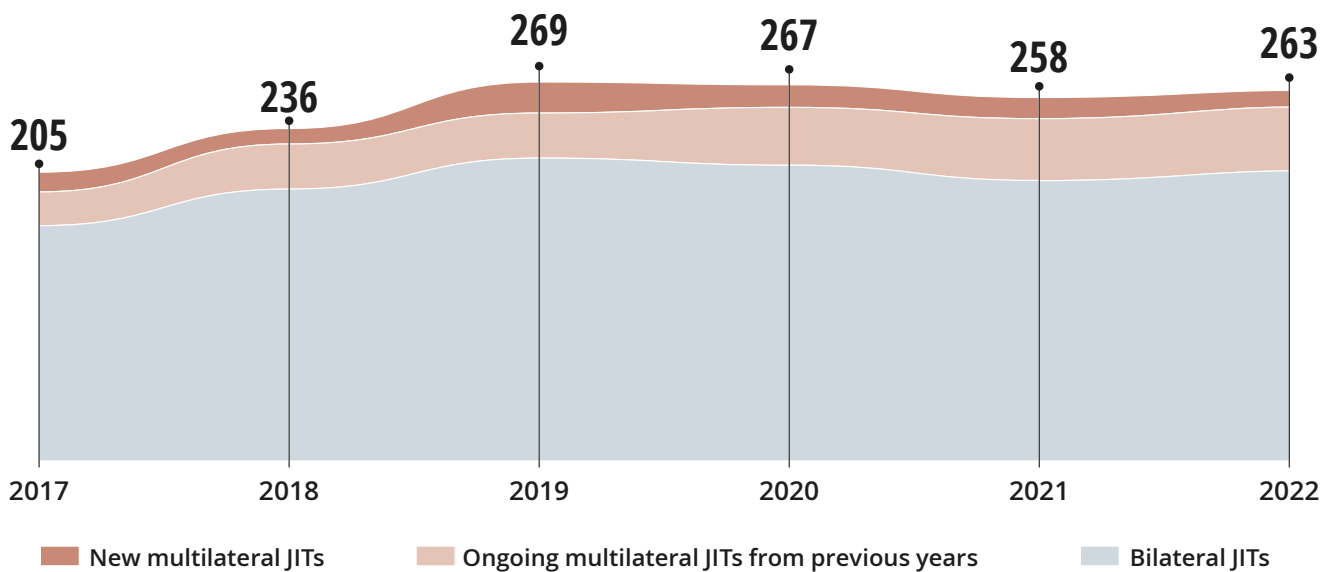
From 2017 to 2022, a total of 626 JITs were supported by Eurojust <sup>(9)</sup>, of which 114 were multilateral JITs. The percentage of multilateral JITs per year in the reporting period more or less remained the same.

All JITs supported by Eurojust	2017	2018	2019	2020	2021	2022	Total
Bilateral JITs supported	167	193	215	210	199	206	512
Multilateral JITs supported	38	43	54	57	59	57	114
<b>Total</b>	<b>205</b>	<b>236</b>	<b>269</b>	<b>267</b>	<b>258</b>	<b>263</b>	<b>626</b>

The below table shows all multilateral JITs, either newly set up or continuing from previous years.

Multilateral JITs supported by Eurojust	2017	2018	2019	2020	2021	2022	Total
New JITs	14	11	22	16	15	12	90
Ongoing JITs from previous years	24	32	32	41	44	45	24
<b>Total</b>	<b>38</b>	<b>43</b>	<b>54</b>	<b>57</b>	<b>59</b>	<b>57</b>	<b>114</b>

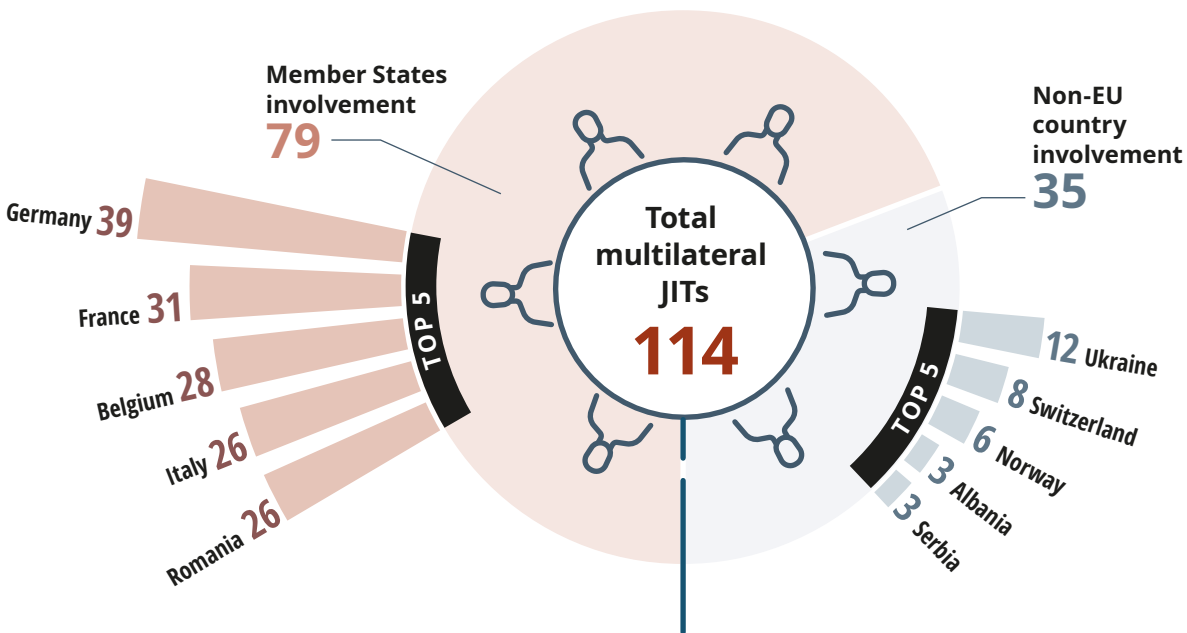
<sup>(9)</sup> Figures per year include newly set up JITs and JITs continuing from previous years.



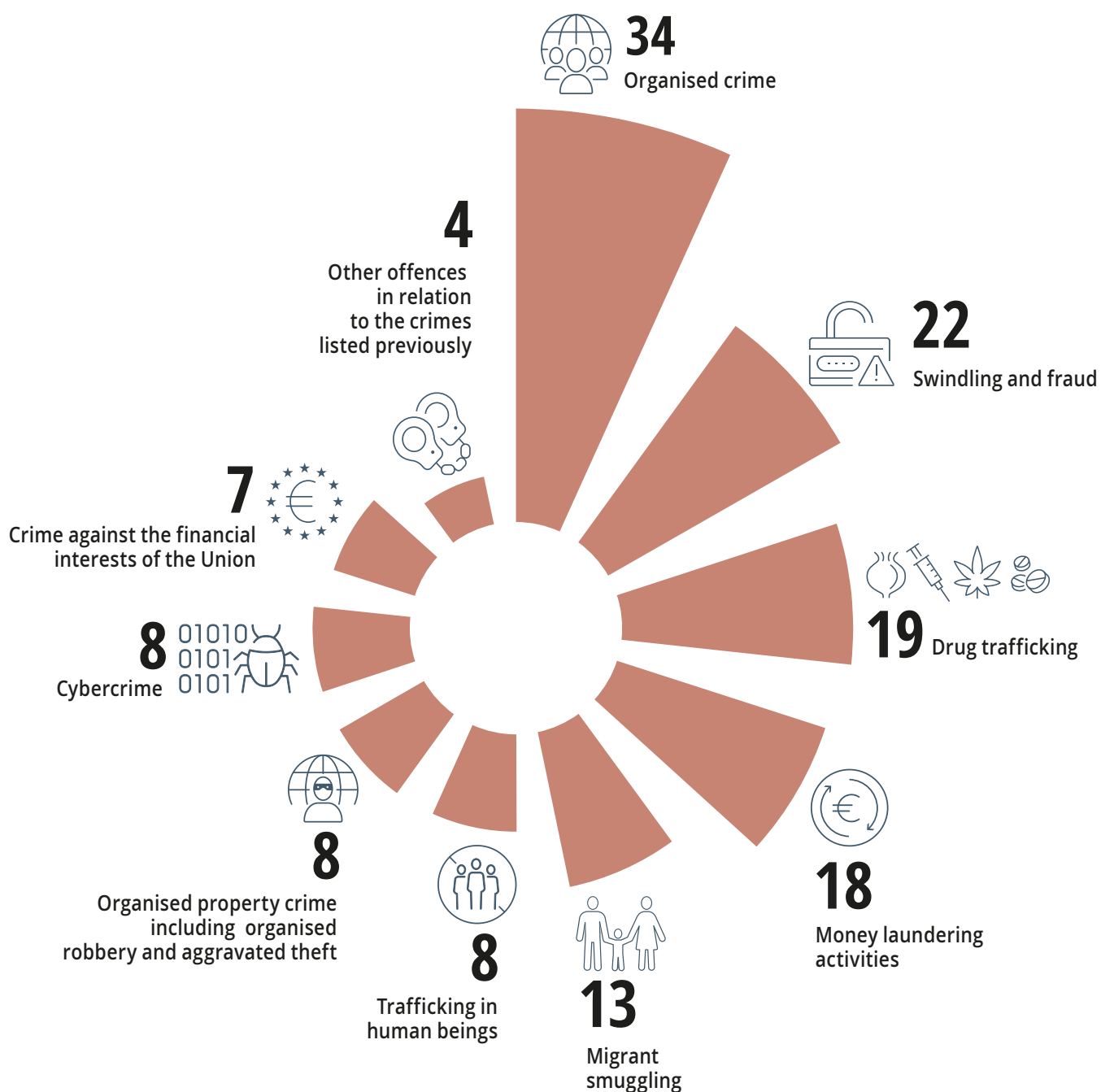
In approximately 30 % of the multilateral JITs supported by Eurojust in 2017–2022, the JIT was set up with non-EU country involvement (35 out of 114). The top five Member States involved in multilateral JITs in the reporting period are Germany (39), France (31), Belgium (28), Italy (26) and Romania (26). The top five

non-EU countries are Ukraine (12), Switzerland (8), Norway (6), Albania (3) and Serbia (3).

Eurojust was involved as a JIT participant in 38 multilateral JITs, and OLAF in seven.



The below chart shows the most frequent crime types in multilateral JITs set up in 2017–2022.



## 2.4 A MULTILATERAL JOINT INVESTIGATION TEAM IN A MIGRANT SMUGGLING CASE

### Crime

An organised crime group had been organising the smuggling of migrants from Vietnam since at least March 2021. The migrants would arrive by plane to Europe under a work visa for one specific country. Once in Europe, the migrants were transported through the territories of Hungary, Slovakia, Czech Republic, Germany and Belgium, to their final destinations, usually France or the United Kingdom. For this activity, the suspects used their personal motor vehicles and, in some cases, inflatable motorboats for the final stage of the journey, endangering the migrants' lives.

### Challenges

In such cases in which the safety and lives of migrants are often put at risk, reaction time is a decisive element. There is a need to bring actors from all involved countries together and to act quickly.

### Setting-up phase

At Europol, the European Migrant Smuggling Centre organised several operational meetings for the national investigators and provided intelligence and analytical support. It was then necessary to also ensure cross-border cooperation at judicial level, and the case reached Eurojust. The agency organised coordination meetings, in which decisions to set up a JIT and, later, to extend the JIT, were taken. Eurojust supported the drafting of the JIT agreement and the signature process using all the different language versions. In March 2022, the JIT entered into force between Belgium, Czech Republic, Hungary and Poland,

with Eurojust and Europol as participants. Germany joined the JIT shortly after.

### Operational phase

During a Eurojust coordination meeting, a priority to prosecute the suspects as an organised crime group was agreed ('who is best placed to prosecute whom?'). The Czech authorities took the lead with some exceptions. During this meeting, the best timing for a common action day was decided. The action was carried out in June 2022 in Belgium, Czech Republic, Germany and Poland. Nine people were arrested and seven home searches were carried out, together with two searches of other premises. Several motor vehicles and cash amounting to several hundred thousand Czech koruna were seized. The actions were supported by a coordination centre at Eurojust and the deployment of Europol mobile offices.

In addition, Eurojust provided JIT funding in this case, which was mainly used for the translation of extensive evidence.

### Added value of the JIT

The main benefit of the JIT was that it enabled a common prosecutorial strategy between all JIT parties to be defined and a priority to prosecute to be agreed. This ultimately led to the dismantling of the organised crime group as a whole, including the higher ranks and not only the drivers. At law-enforcement level, informal and regular contact took place, supported by Europol. At judicial level, Eurojust acted as a bridge between the different prosecution offices. A coordinated and targeted exchange of information took place, with JIT partners assisting in filtering the material by relevance. When, prior to the action day, the Belgian authorities had to intervene earlier as the lives of migrants accommodated in a safe house in Belgium were endangered, the consultation within the JIT ensured that the other investigations were not jeopardised. When the investigations were in an advanced stage, the JIT partners reached an agreement on the best timing for the action day.

## 2.5 CHECKLIST FOR MULTILATERAL JOINT INVESTIGATION TEAMS

### SETTING-UP PHASE



#### 1 Identification of parallel or linked investigations

- ✓ Obtain an overview of parallel or linked investigations at national and international levels.
- ✓ Assess which countries need to cooperate most intensively (a key factor is investigations being at a similar stage).



#### 3 Various approaches

- ✓ Keep the JIT manageable: from previous experience, up to four parties are in general manageable; more JIT parties to join only after careful assessment of advantages and disadvantages.
- ✓ Option to set up a smaller JIT or bilateral JIT first between countries that have already established good and close cooperation.
- ✓ Sometimes a strategic decision to join forces is needed to convince another country of the value of joining a JIT.



#### 2 Factors for assessing the suitability of a multilateral JIT

- ✓ Need for enhanced cooperation to tackle complex crimes, particularly involving transnational organised crime groups.
- ✓ Level of overlap between the investigations; need to prevent and solve conflicts of jurisdiction.
- ✓ Estimated scope of information/material that needs to be exchanged.
- ✓ Possible upcoming joint action days in multiple countries with attendance of seconded members.
- ✓ Available resources in the countries involved.
- ✓ Estimated time frame for finalising the JIT agreement, taking into account the organisational and administrative efforts.
- ✓ Dedication and cooperative mindset.
- ✓ Level of experience with the JIT tool, especially in JITs with four or more JIT parties.



#### 4 Legal framework

- ✓ Depends on whether or not a non-EU country is involved.
- ✓ For more information, see the Guidelines on Joint Investigation Teams Involving Third Countries.



#### 5 Drafting the JIT agreement

- ✓ Consider using the JIT model agreement.
- ✓ It is best practice to negotiate in a common working language.
- ✓ Purpose and aim of the JIT: define and outline the scope of the investigations (specific crimes, links between the investigations and the aim of the JIT).
- ✓ Translation of the JIT agreement: check if required and, if so, whether only one language version could be signed and then a certified translation produced.
- ✓ Agree on a common working language for the JIT, when possible.
- ✓ Check if a scanned version is sufficient or if original documents are needed.
- ✓ Consider confidentiality and the media strategy.



#### 6 Eurojust support

- ✓ Involve Eurojust as early as possible.
- ✓ Identification of suitable cases for a JIT, clarification of legal/formal requirements, drafting of the JIT agreement, enabling the signature process.
- ✓ Organisation of coordination meetings at Eurojust.

## OPERATIONAL PHASE



### 1 Investigative approaches

- ✓ Either establish a common investigative approach or inform each other about the investigative approach and ensure co-existence without jeopardising each other's investigations.
- ✓ Mutually understand the differences in judicial systems at critical moments of the investigation.
- ✓ Who will be prosecuted where and for which offences?



### 2 Appointment of a driver/coordinator

- ✓ Added value if one JIT partner takes the lead and acts as a driver/coordinator in the interest of the JIT (also for JITs funding).
- ✓ When investigations in one JIT country reach a dead end, it is crucial that the other JIT members remain active and continue to cooperate; the country could withdraw its participation in the JIT, leaving the other countries continuing the JIT.



### 3 Contact/communication between JIT members

- ✓ Appointment of a contact person (one JIT member per country) who is able to communicate in a common working language.
- ✓ Organise regular meetings, with all or selected JIT members.
- ✓ It is often easier to reach agreements on the way forward in face-to-face meetings.
- ✓ Eurojust to act as a bridge between the national judicial authorities.



### 8 Eurojust support

- ✓ Maintain the overall overview of the progress of the JIT.
- ✓ Anticipation and clarification of legal and operational issues (e.g. possible extension of the JIT, ne bis in idem issues, priority to prosecute, transfer of proceedings).
- ✓ JIT funding, including loan of secure IT equipment and purchase of low-value equipment.
- ✓ Coordination meetings: need for good preparation for meetings; coordination meetings possibly organised in combination with an operational meeting at Europol.
- ✓ Coordination centres.
- ✓ Assistance with amendments to the JIT agreement, for example on the JIT prolongation (could be for all or just for selected countries).
- ✓ Assistance with the evaluation of a JIT.



### 7 Extension of the JIT

- ✓ Check if the stage of the investigations in the JIT countries and the JIT candidate country are aligned.
- ✓ Ask 'what do we want to achieve with the extension of the JIT?'
- ✓ Ensure proper expectation management regarding what could be done within the JIT.



### 6 (Joint) action days

- ✓ Preparation of an overview of measures: which measures have to be executed where, which measures fall under the remit of the JIT and for which measures national court orders, mutual legal assistance or mutual recognition requests are required.
- ✓ Agree on date, starting time and secondment of JIT members.
- ✓ Agree on a common media strategy.
- ✓ If early intervention is needed in one country, the overall scope of the JIT investigations should not be disclosed.



### 5 Common suspects

- ✓ Identification of common suspects.
- ✓ Decide on a priority to prosecute, preferably before joint action days: who will be prosecuted where and for which offences?



### 4 Exchange of information and/or evidence

- ✓ In a first JIT meeting, address the issue of disclosure/exchange of information between JIT partners.
- ✓ No automatic sharing of documents with all JIT members, only those for which the information is of importance.
- ✓ Conduct filtering and prioritisation so that only documents of relevance are exchanged.
- ✓ Discuss how to exchange large files electronically in a secure environment (e.g. Europol's LFE solution).
- ✓ Documents considered intelligence should not be shared without a clear marking that they cannot be used in judicial proceedings.
- ✓ Possible added value of maintaining overview lists of exchanged material.



# CHAPTER 3:

## RECENT DEVELOPMENTS IN JOINT INVESTIGATION TEAMS





# CHAPTER 3: RECENT DEVELOPMENTS IN JOINT INVESTIGATION TEAMS

This chapter aims to provide information to practitioners on the recent developments in JITs cooperation, as observed in Eurojust's casework and reported by the JIT National Experts.

One of the most valuable advantages of the tool is its flexibility and ability to adjust to specific practical circumstances, newly imposed legal requirements and ever-changing needs of practitioners.

This chapter focuses on the recent developments in JITs (between the start of 2019 and the end of 2022). It presents general figures, important novelties, and trends and new practices in the functioning of JITs. Furthermore, it includes an overview of changes related to the financial and logistical support of Eurojust to JITs and a list of other tools recently developed to support practitioners with the setting up and operations of JITs.

From the start of 2019 until the end of 2022, Eurojust supported 498 JITs, of which 331 were newly set up and 167 were ongoing from previous years. The total number of supported JITs per year varied from 258 to 269. The number of new JITs set up each year decreased, from 102 in 2019 to 76 in 2022, mostly due to the COVID-19 pandemic.

Of the 498 JITs that Eurojust supported, **401 were bilateral and 97 were multilateral**. The most common numbers of JIT parties in multilateral JITs were three (43 JITs), four (34 JITs) and five (12 JITs).

The crime types looked at in new JITs are organised crime (118); money laundering activities (85); swindling and fraud (79); drug trafficking (74); trafficking in human beings (62); crimes against life, limb or personal freedom (26); migrant smuggling (20); cybercrime (20); organised property crime including organised robbery and aggravated theft (17); and forgery of administrative documents (14).

Non-EU countries participated in 166 out of the 498 supported JITs, of which 133 were newly set up and 33 were ongoing from previous years. The number of JITs involving non-EU countries doubled from 54 in 2019 to 110 in 2022, partly due to the withdrawal of the United Kingdom from the EU.

The top non-EU countries involved are the United Kingdom (33), Switzerland (28), Ukraine (20), Albania (17), Norway (16), Moldova (15), Serbia (5), Bosnia and Herzegovina (3), Brazil (2), Georgia (2), Kazakhstan (1), Kosovo (10) (1) and Liechtenstein (1).

The top crime types with non-EU country involvement are organised crime (52); money laundering activities (35); swindling and fraud (30); drug trafficking (27); trafficking in human beings (27); crimes against life, limb or personal freedom (11); organised property crime including organised robbery and aggravated theft (8); cybercrime (8); illegal trading (7); and corruption (7).

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<sup>(10)</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

## 3.1 NEW JIT PARTNERS

During the period of this evaluation, the everyday dynamics of the judicial cooperation in criminal matters, reflected in the work of practitioners, resulted in the identification of new entities associated with JITs, acting either as JIT parties or as participants in a JIT.

### 3.1.1. European Public Prosecutor's Office

On 12 October 2017, the Council adopted Regulation (EU) 2017/1939<sup>(11)</sup>, which established an independent EU prosecution office – the European Public Prosecutor's Office (EPPO) – with the powers to investigate, prosecute and bring to judgment crimes against the EU's financial interests (so-called PIF crimes)<sup>(12)</sup>. The EPPO started its operations on 1 June 2021.

Based on the current legal framework, amongst the Member States participating in the EPPO regulation, there is no need for JITs or any other judicial cooperation requests.

However, in cross-border investigations with non-participating Member States or non-EU countries, the EPPO can set up and be an active member of JITs, provided that there is an appropriate legal basis to do so (see Articles 104 and 105 of the EPPO regulation)<sup>(13)</sup>.

Determining an appropriate legal basis for setting up a JIT between non-participating Member States or non-EU countries and EPPO

<sup>(11)</sup> [Council Regulation \(EU\) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office \('the EPPO'\)](#) (OJ L 283, 31.10.2017, p. 1).

<sup>(12)</sup> Currently, 22 Member States participate in the enhanced cooperation. So far, Hungary, Poland and Sweden have decided not to join the EPPO. Denmark and Ireland are not required to comply with the EPPO regulation in accordance with their respective protocols to the Treaty on the Functioning of the European Union.

<sup>(13)</sup> For more information, see the [note from the EPPO on this topic](#).

will depend on domestic laws of the countries involved, interpretation of the existing JITs legal framework and its implementation in national systems of the concerned countries.

In February 2022, the first JIT between Sweden and the EPPO was set up with the support of Eurojust, in order to investigate a major case of VAT fraud. Cross-border VAT or carousel fraud of over EUR 10 million fall under the competence of the EPPO. As Sweden does not participate in the EPPO, it asked Eurojust to support the cooperation between it and the EPPO.

During the coordination meeting organised by Eurojust, it was decided that a JIT would be set up between the EPPO and Sweden to allow for closer cooperation and more efficient exchange of information and evidence. The JIT agreement was signed by Sweden and the French European Delegated Prosecutor at the EPPO, with the participation of Eurojust to support cooperation between Swedish authorities and the EPPO.

### 3.1.2. International Criminal Court

After the start of the Russian invasion of Ukraine in February 2022, several Member States and the International Criminal Court (ICC) opened investigations into alleged war crimes, crimes against humanity and other core international crimes.

In order to facilitate the evidence exchange and common investigative efforts, a JIT was set up on 25 March 2022 between Lithuania, Poland and Ukraine, with the support of Eurojust, which joined the JIT as a participant from the beginning. At the end of May 2022, Estonia, Latvia and Slovakia joined the JIT, while Romania became the seventh party of the JIT on 13 October 2022.

From the outset of its functioning, the JIT parties considered the best way to involve the ICC in their activities to allow for closer cooperation. Subsequently, the ICC was invited to

join the JIT as a participant, and on 25 April 2022 an amendment to the JIT agreement was signed.

The ICC, which was established by the [Rome Statute of the International Criminal Court](#) (hereinafter the Rome Statute), is a permanent independent judicial body dealing with genocide, crimes against humanity, war crimes and crimes of aggression.

Part 9 of the Rome Statute provides for a general duty of the state parties to cooperate fully with the ICC (Article 86), empowers the ICC to make requests for the cooperation addressed to states and provide detailed rules on these requests (Article 87). Furthermore, Article 93 lists the investigative measures that the ICC is entitled to request from states (e.g. taking evidence, including testimony; questioning of any person investigated; service of documents).

The possible involvement of the ICC in JITs can be considered twofold: as a JIT party or as a JIT participant. The Rome Statute does not provide for explicit rules that determine the status of the ICC in a JIT, nor do the provisions of Article 13 of the 2000 European Convention on Mutual Assistance in Criminal Matters and Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters explicitly regulate the involvement of the ICC in a JIT. Therefore, a JIT agreement would need to determine the ICC's role, in particular taking into account the national legislation of the involved countries and the operational needs of the JIT.

The participants of the [18th JITs annual meeting](#) that took place on 5–6 October 2022 noted the following possible benefits of involving the ICC in JITs:

ability to use the experience of the ICC in relation to investigations of core international crimes and in collaborating with civil society organisations;

the ICC's field-based presence and the opportunity to use its investigative ability on the ground;

the acceleration of cooperation and the prevention of duplication of work;

ensuring that evidence collection is in line with ICC standards for an eventual prosecution by the ICC;

creating links between the community of national authorities party to the Rome Statute and the JITs Network.

Furthermore, the ICC involvement could also be of value outside of situations in which the ICC has jurisdiction. The ICC may be able to contribute thematic knowledge or provide assistance without actively investigating a case. It can also share information with national authorities about serious crimes that are not core international crimes.

## 3.2 CRIMES IN FOCUS: JOINT INVESTIGATION TEAMS IN THE AREA OF CORE INTERNATIONAL CRIMES

The conflicts in Syria, northern Iraq and – most recently – Ukraine, led to a shift from international to domestic forms of accountability for core international crimes. This resulted in an increasing number of investigations and prosecutions being launched in the Member States relating to the atrocities committed in these regions. A number of these investigations have resulted in the setting up of JITs.

Undeniably, investigations of core international crimes require innovative approaches in prosecutorial strategies to be successful. In

recent years, the concept of structural investigation has been developed in some countries and is increasingly considered an efficient and effective tool for domestic accountability efforts to prosecute core international crimes.

**Structural investigations are not directed against specific persons, but rather focus on the structures and context within which crimes were perpetrated. In other words, they primarily focus on ‘contextual elements’ and ‘structural aspects’ of a specific situation, instead of an individual incident or perpetrator. In the first instance, structural investigations aim to gather large amounts of evidence on alleged crimes and to identify the structures behind them, by analysing existing material evidence, open sources, witness and victim testimonies, and other sources of information. This structural/background work increases the prosecutors’ ability to determine patterns of criminality such as the chain of command and to then identify individual perpetrators<sup>(14)</sup>.**



As the number of investigations and prosecutions related to core international crimes grows in different countries, so does the need for cooperation. In recent years, national authorities have increasingly turned to JITs in the context of core international crime cases due to the highly complex nature of these cases, requiring close cooperation and coordination.

One successful example is the investigation in the ‘Caesar files’. In 2019, Sweden opened a structural investigation focusing on the iden-

tification of Swedish foreign terrorist fighters who may have perpetrated core international crimes. The investigation was broad and aimed at gathering all evidence available in Sweden related to possible violations of core international crimes during a specific period committed by members of Da’esh / the Islamic State or by individuals otherwise affiliated with the organisation. So far, the structural investigation has enabled several individual cases to be opened in Sweden. Based on this work, in October 2021, the Swedish authorities signed a JIT agreement with France to support proceedings involving core international crimes committed by foreign terrorist fighters against the Yazidi population in Iraq and Syria<sup>(15)</sup>.

In another case, a German–French JIT was set up with the support of Eurojust and the Genocide Network to investigate the Syrian intelligence services’ involvement in the death of 27 members of the opposition party due to torture and inhumane conditions of imprisonment. Combining structural investigations with the advantages of cooperation in the JIT led to the successful conviction of a high-ranking official of the Syrian regime in the Koblenz trial<sup>(16)</sup>.

More recently, several Member States have opened structural investigations in relation to the conflict in Ukraine, with the aim of securing witness testimonies from Ukrainians who fled to other European countries. At the same time, on 25 March 2022, a JIT agreement was signed between Lithuania, Poland and Ukraine, which was later expanded to Estonia, Latvia, Romania and Slovakia. For the first time, on 25 April 2022, the ICC joined the JIT as a participant.

<sup>(14)</sup> For more information, see the [Conclusions of the 31st Genocide Network meeting, 6–7 April 2022](#) and the [Report of the 31st Meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes \(6–7 April 2022\)](#), Council Doc. 9849/22, 7 June 2022.

<sup>(15)</sup> See Eurojust (2022), [‘Support to joint investigation team of Sweden and France targeting crimes against Yazidi victims in Syria and Iraq’](#), press release.

<sup>(16)</sup> See Eurojust (2022), [‘Syrian official sentenced to life for crimes against humanity with support of joint investigation team assisted by Eurojust’](#), press release.

As shown in the presented cases, combining structural investigations with cooperation in a JIT, including the support of Eurojust and Europol, can play a critical role in securing successful prosecutions and convictions.

### 3.3 FINANCIAL AND LOGISTICAL SUPPORT

Financial and logistical support provided by Eurojust to JITs plays an important role and is appreciated by numerous JITs across the EU. Experience with JITs funding is different for each JIT; while some JITs apply regularly for large amounts (in particular multilateral complex JITs), others apply occasionally or for small amounts (in particular bilateral JITs between neighbouring countries).

Eurojust's JITs Funding Programme aims to finance various JITs; however, one of the award criteria is the 'number of states involved', and thus the multilateral factor is a significant one. The below table illustrates the number of supported JITs, including the percentage of funded multilateral JITs and the number of awarded applications, over the period 2019–2022.

All JITs faced various challenges in recent years, as outlined in the following sections.

#### 3.3.1. Consequences of the COVID-19 pandemic

JITs that were active between 2020 and 2022 have been heavily affected by the COVID-19 pandemic. This was noticeable in the area of JITs funding. Most of these JITs were affected by measures to prevent the spread of the virus. For example, they were hindered in their implementation of operational activities, which affected funding needs. Financial support was sought mainly for translation and interpretation services. For instance, 93.4 % of the reimbursed costs in 2020 (a year heavily impacted by the travel restrictions associated with the COVID-19 pandemic) were for translation and interpretation, while only 6.6 % were for travel and accommodation. These numbers can be compared with the previous year (i.e. before COVID-19), in which 73.1 % of the reimbursed costs were for translation and interpretation, and 26.9 % were for travel and accommodation.

In response to the global situation and operational challenges, the Eurojust JITs Funding Programme adjusted several rules to introduce some flexibility in the funding mechanism. For example:

	2019	2020	2021	2022
Financially supported JITs	148	115	104	123
Awarded applications	289	184	182	250
% of multilateral JITs funded by Eurojust	16 (24/148)	21 (24/115)	24 (25/104)	18 (22/123)

*The number of funded JITs, and the number of awarded applications, slightly differed each year.*

- consumption rates were excluded from the award criteria;
- requests for an extension of the action period were accepted by email submission (without a form), submitted at least 1 day before the end of the action period;
- the condition of limited transfer between awarded cost categories was lifted.

Nevertheless, because of the pandemic, a decrease in the number of supported JITs and awarded grants was reported (see the above table).

### 3.3.2. Financing of a joint investigation team investigating core international crimes

In 2022, a JIT investigating core international crimes committed in Ukraine was set up (see Sections 3.1.2. and 3.2.). Since its establishment, this important JIT benefited from financial and logistical support provided by Eurojust. The JIT had specific operational needs, which were carefully observed and reflected in decision-making and funding schemes' adjustments. For example, the JIT was provided with a large number of phones and laptops (45 phones and 45 laptops per award; on average, JITs request two phones and/or two laptops).

### 3.3.3. Changes in funding schemes

Apart from the temporary adjustments related to COVID-19, the JITs Network Secretariat introduced some other important novelties in order to broaden and facilitate the financial support to JITs while reflecting their operational needs.

As of April 2021, JITs may apply for funding for urgent and/or unforeseen activities outside a published call for proposals. Funding for such activities may be requested at any time, which provides much awaited and necessary flexibility. Since the implementation of this 'fast-

track' funding scheme, 19 grants have been awarded to 13 different JITs.

In October 2021, the cost categories eligible to receive financial support were expanded to include specialist expertise costs; purchase of low-value equipment; and travel and accommodation costs for victims and witnesses. The new cost categories quickly became popular: since October 2021, 27 JITs received a grant to finance specialist expertise and 42 JITs received a grant to purchase low-value equipment (out of the total of 269 JITs awarded funding within the reporting period).

## 3.4 OTHER SUPPORTING TOOLS FOR PRACTITIONERS DEVELOPED BY THE JITS NETWORK AND THE JITS NETWORK SECRETARIAT

The JITs Network, with the support of its secretariat, provides useful tools and resources to encourage the use of JITs by national practitioners, facilitate the setting up of JITs and contribute to the sharing of lessons learned and best practices.

Since 2019, the secretariat has created several noteworthy new products and updates, starting with a range of promotional and educational videos focused on JITs, the JITs Network, its secretariat and JIT funding. These videos are available on the Eurojust YouTube channel and can be used in training and presentations.

The JITs Practical Guide was updated in December 2021 to reflect legislative changes affecting the cooperation in JITs and to address recent developments in the setting up and operation of JITs.



The consolidated version of the JIT Model Agreement was updated in early 2022, with the inclusion of a new version of Appendix I, which contains updated information regarding the conditions for the participation of Eurojust, Europol and OLAF in a JIT.

The Guidelines on JITs with Involvement of Third Countries were jointly updated by the JITs Network Secretariat and Eurojust in June 2022. They provide guidance on specific factors that competent national authorities of the Member States may need to consider when deciding to use a JIT as a tool for cooperation with a non-EU country. To this same end, a Checklist for practitioners on JITs involving non-EU countries was included.

The JITs Restricted Area is undergoing a complete revision, and a new, more modern restricted area will be launched in 2023.

JIT National Experts and practitioners continued to come together in the annual meetings of the JITs Network. In 2020, the meeting took place through videoconferencing only, due to COVID-19 restrictions. It focused on '[Solutions for Challenging JITs – JITs in the digital era](#)'. In 2021, the meeting was held in a hybrid format and focused on '[Securing the EU Beyond its Borders: JITs with third countries. New trends, challenges and opportunities](#)'. Finally, in 2022, the Network returned to meet in person for an annual meeting that looked at '[Supporting JITs in Times of Conflict](#)'.

### 3.5 LOOKING INTO THE FUTURE: A COLLABORATION PLATFORM FOR JOINT INVESTIGATION TEAMS

The JITs evaluated for this report, and those analysed for the previous reports, advocated for an '**operational online collaborative environment**' that would enable secure electronic exchange of information and evidence and secure electronic communication with other JIT members and JIT participants.

Following up on this recommendation, on 1 December 2021, the European Commission presented a package of legislative initiatives on security and justice in the digital world including a Proposal for a Regulation of the European Parliament and of the Council establishing a collaboration platform to support the functioning of joint investigation teams and amending Regulation (EU) 2018/1726 <sup>(17)</sup>.

On 13 December 2022, the negotiating parties reached political agreement on the text of the draft Regulation. After the final adoption by the Council and European Parliament, the Regulation will be published in the Official Journal of the EU.

The Regulation establishing the JITs collaboration platform allows for the creation of an IT platform to facilitate cooperation between authorities involved in a JIT.

The purpose of the JITs collaboration platform is to facilitate the coordination and management of a JIT; the rapid and secure exchange and temporary storage of operational data (including large files); and secure communications between JIT members and partici-

<sup>(17)</sup> COM(2021) 756 final.

pants. It will also contribute to the traceability of evidence exchange through logging and tracking mechanisms, and it will streamline JIT evaluations by providing for a collaborative evaluation process. Use of the platform will be voluntary.

It will be possible to use the JITs collaboration platform from the moment the JIT agreement has been signed until after the evaluation is completed.

The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) will be responsible for the development and operational management of the JITs collaboration platform. The agency will not have access to the content of the JIT collaboration spaces.

The JITs Network Secretariat will have the following responsibilities and tasks with regard to the JITs collaboration platform:

providing administrative, legal and technical support in the context of the set-up and access rights management of individual JIT collaboration spaces;

providing day-to-day guidance, functional support and assistance to practitioners regarding the use of the JITs collaboration platform and its functionalities;

designing and providing training modules for the JITs collaboration platform users, aiming to facilitate the use of the JITs collaboration platform;

enhancing a culture of cooperation within the EU in relation to international cooperation in criminal matters by raising awareness and promoting the use of the JITs collaboration platform among practitioners;

keeping, after the start of operations of the JITs collaboration platform, eu-LISA informed of additional functional requirements by drafting an annual report on potential improvements and new functionalities of the JITs collaboration platform based on the feedback on the practical use of the JITs collaboration platform it collects from users.

The JIT space administrators designated by each JIT party will manage the access rights. The JIT agreement may also provide for the following to be granted access to the JIT collaboration space: competent EU bodies, offices and agencies; non-EU countries that have signed the agreement; and representatives of international judicial authorities who participate in the JIT. Additionally, the JITs Network Secretariat may be granted access for providing technical and administrative support.

eu-LISA will be responsible for a high level of cybersecurity and information/data security within the JITs collaboration platform to ensure the confidentiality and integrity of operational and non-operational data stored in the system.

The start of operations of the JITs collaboration platform should be no later than 2.5 years after the entry into force of the regulation.

# CHAPTER 4:

## CASE LAW RELATED TO JOINT INVESTIGATION TEAMS





# CHAPTER 4: CASE LAW RELATED TO JOINT INVESTIGATION TEAMS

The objective of this chapter is to provide an insight into judicial decisions rendered in the Member States between 2019 and 2022 in which JITs-related issues were tackled. The analyses of the judicial decisions focus in particular on the JITs-related aspects of the cases, rather than covering all the issues and arguments addressed by the courts. The analysed judicial decisions have been provided to the JITs Network Secretariat by the JIT National Experts.

## PROCEDURE: COURT OF ROTTERDAM, CASE 10/960023-20, THE NETHERLANDS

*Date: 22 December 2020*



### Introduction

In 2017, French police and judicial authorities began investigating phones using the secure communication tool EncroChat, an encrypted phone solution widely used by criminal networks across the globe. A JIT agreement was signed between France and the Netherlands in April 2020.

This intensive operation provided insights and information related to several international criminal networks involved in various criminal activities.

When one of the cases was presented to the court in the Netherlands, the defence lawyer requested the inclusion of the abovementioned JIT agreement in the court file.

### Court reasoning and decision

The court ruled that the defence had no reasonable grounds/merits for such a request, because the JIT agreement concerned cooperation between the French and Dutch investigation services for possible offences committed by the EncroChat company and not for the purpose of investigating the accused in respect of the offences alleged against him. The interest of the defendant would not be harmed if he does not receive the JIT agreement.

The court rejected the request that the public prosecutor should be ordered to include the JIT agreement in the court file.

## PROCEDURE: COURT OF ANTWERP, CASE AN63.97.466-17, BELGIUM

*Date: 4 June 2021*



### Introduction

In 2017, the Belgian Federal Agency for the Safety of the Food Chain received information that the chemical substance Fipronil was found during sampling of eggs. Fipronil is harmful to humans and may therefore not be given to animals used in the production of food.

The authorities in Belgium and the Netherlands set up a JIT to facilitate the investigation of these facts. The case was against several companies and individuals.

The defendants were charged with several criminal offences, including participation in a criminal organisation; forgery of documents; and import, export, manufacture, transport, sale, offer for sale, possession, delivery or acquisition of substances with hormonal, anti-hormonal, anabolic, beta-adrenergic, anti-infectious, anti-parasitic and anti-inflammatory effects.

At the trial, the defendants argued that the establishment of the JIT violated the principle of equality of arms and the right to a fair trial.

### **Court reasoning and decision**

Argument 1: violation of the principle of equality of arms

The court affirmed that the mere fact that the public prosecutor is part of a JIT in no way implies a violation of the equality of arms between parties. The public prosecutor is always involved in any form of international judicial cooperation, either directly or through access to an ongoing judicial investigation led by the investigating judge, while, by definition, the accused is not involved in such cooperation.

The court further noted that the Belgian investigating judge in this matter was also part of the JIT; therefore, the actions performed in the JIT were carried out under the judicial oversight.

Argument 2: violation of the right to a fair trial due to the defendant's inability to take note of the information included in the Dutch file

The defendant claimed that two other people were part of the criminal organisation; however, they were prosecuted neither in the Netherlands nor in Belgium for reasons unknown to him. The court stated that the lack of an ongoing prosecution in itself does not imply that the Dutch criminal file would contain information relevant to the defendant. Moreover, based on other documentation before the court, it was clear that neither of these other individuals wished to make any statement on this matter either within the Dutch investigation or at the request of the Belgian authorities.

Argument 3: violation of the right to question the suspects in the Netherlands

Finally, the defendant argued that the right to a fair trial had been violated because the defence was not in a position to hear the two other individuals as witnesses at the trial, nor were these people questioned by the Belgian investigators.

The court found that the rights of the defendant had not been violated because the two individuals were not heard as witnesses. Rather, it appeared to the court that these people invoked their right to remain silent, which cannot have, by itself, the effect of violating the defendant's rights of defence.

## **PROCEDURE: DISTRICT COURT OF THE HAGUE, MH17, THE NETHERLANDS**

*Date: 17 November 2022*



### **Introduction**

In this case, Australia, Belgium, Malaysia, the Netherlands and Ukraine worked together on the criminal investigation into the crash of Flight MH17, which took place on 17 July 2014. Based on the results of that investigation, the Dutch Public Prosecution Service (PPO) prosecuted four suspects for their involvement in bringing down the flight. Three of them were sentenced to life imprisonment and one was acquitted. The judgments were issued on 17 November 2022.

### **Court reasoning and decision**

In the judgment, the court addressed several of issues related to the JIT, including a specific issue related to the media strategy.

The defence argued that the (members of the) JIT, and in particular the Dutch PPO, violated the right to presumption of innocence by repeatedly making

public statements about the acts that had allegedly been committed in respect of Flight MH17, including by sharing the names and photographs of the suspects.

The court did not deal with the question of whether the right to presumption of innocence was violated, because, even if that were the case, it would not necessarily lead to a violation of the right to a fair trial (Article 6 of the European Convention on Human Rights). For a violation to occur, it would have to be shown that the statements of the JIT members / Dutch PPO had influenced the judges, which was not the case.

However, the court did voice some concerns about the chosen method of communication, since it did contribute to the formation of public opinion about the case.

Furthermore, the court discussed whether disclosing the personal details of the suspects amounted to a violation of the right to privacy under Article 8 of the European Convention on Human Rights. Although the court did find an infringement of the private life of the suspects, it was of the opinion that the infringement was limited. Thus, it had no consequences for the fairness of the trial.

The court strongly disagreed with the PPO decision to launch an application, through which the public could access (parts of) the court file. By sharing information in such a planned and public way, the PPO violated the principles of due process. However, the court did not let this application affect its deliberation, and the violation by the PPO was not considered to meet the threshold to declare the case inadmissible.

The court then addressed the question of whether there was conclusive evidence in the case file to prove what caused MH17 to crash and who played a crucial role in this.

One of the defendants argued that the fact that the investigation was carried out within a JIT, with JIT members working unsafely in the area affected by the armed conflict, had consequences for the gathering of evidence and that a reliable and conclusive investigation could not be conducted.

The court reasoned that the set-up and modus operandi of the JIT did not limit the investigation, but rather facilitated and expanded it. The fact that there was an armed conflict in the area did have a limiting effect, and a number of aspects could not be investigated. While the defence argued that this had adverse consequences for the defendant, the court considered that it was not possible to give an opinion on the incriminating or exculpatory nature of the evidence not collected.




The JIT agreement included a provision that seconded members can take part in investigative matters only under the supervision of the JIT leader of the country where investigative measures take place. The defence argued that, due to this rule, the Dutch investigating officers had not been able to carry out investigative acts on the territory of Ukraine autonomously from the Ukrainian Security Service.

The court confirmed that the foreign investigating officers have no investigative powers and may not perform official acts in their own capacity in the Netherlands. It stated that this should not be any different for Dutch investigators in Ukraine in the context of this investigation.

The court furthermore discussed the use of evidence received from or through the Ukrainian Security Service. It concluded that such evidence did not need to be disregarded per se, especially since the PPO put an extensive validation procedure in place.

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